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ABSTRACT

Proposed revisions and additions to the Compendium of Copyright Office practices for 1973 are presented. The bulk of the changes occur in Chapter 2, "Copyrightable Matter." The sub-areas, "Periodicals (Class B)," "Works Prepared for Oral Delivery (Class C)," "Music (Class E)," and "Motion Pictures (Classes L-M)," are replaced with revised pages while the sub-areas, "Works of Art (Class G)" and "Photographs (Class J)" represent new and additional pages to the Compendium. The Preface indicates that the Compendium is primarily an office manual for the use of the staff of the Copyright Office and is not a book of "rules" to be followed. (WH)

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Copyright Office

Library of Congress

Washington, D. C. 20559

COMPENDIUM OF COPYRIGHT OFFICE
PRACTICES

1973 Revisions

INSTRUCTIONS:

The attached revised pages are replacements for those in the Compendium having corresponding numbers, or additional pages to be placed in appropriate numerical sequence.

Each of the attached pages is marked with the identifying date of this revision, thus: [1973]

Particular attention is called to the following new additions to Chapter 2:

Part 2.8 WORKS OF ART (CLASS G)

Part 2.11 PHOTOGRAPHS (CLASS J)

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1973 Revisions (continued)

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COMPENDIUM

of

COPYRIGHT OFFICE PRACTICES

(As of July 1, 1973)

Compendium of

Copyright Office Practices

FOREWORD

The Copyright Office has made available to the public its administrative staff manual known as the "Compendium of Copyright Office Practices." This step was taken pursuant to the Freedom of Information Act (5 U.S.C. § 552). Accordingly, the Regulations of the Copyright Office [37 C.F.R., ch. II (24 F.R. 4955)] were amended, effective July 4, 1967, to provide in Section 201.2(b)(3):

> The Copyright Office maintains an administrative staff manual referred to as its "Compendium of Office Practices," and an index to the manual, for the general guidance of its staff in making registrations and recording documents. The manual and index, as amended and supplemented from time to time, are available in the Copyright Office for public inspection and copying.

Although previously available for inspection and copying, it was not until the July 1970 edition that the Compendium was published through the Superintendent of Documents of the Government Printing Office.

The Compendium has not yet been completed and does not cover all aspects of Copyright Office work. Additional portions will be issued as they are completed, and amendments and supplements will be issued from time to time. These changes will be published in the form of additional or replacement pages of this looseleaf publication.

REGISTER OF COPYRIGHTS

Compendium of

Copyright Office Practices

PREFACE

This Compendium is an Office manual intended primarily for the use of the staff of the Copyright Office as a general guide to its operating problems and practices.

It is important to note that the Compendium is not a book of "rules" to be followed. Similarly, it is not a set of ready-made answers to questions arising in cases encountered in daily work.

The Compendium is a condensed digest of Office practices in individual cases representing common fact situations. It is a guide to general precedents and no more. Since the statements of practice in the Compendium are necessarily simplified, they cannot cover every situation that may arise. Each new case presented to the Office involves its own facts which may require special analysis.

The practices of the Copyright Office are subject to constant review and modification in the light of new experience and continuing reappraisal. Accordingly, further additions, deletions, and other changes will be made from time to time. The Copyright Office will maintain a separate record of all material withdrawn from this volume as superseded.

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Chapter 2

COPYRIGHTABLE MATTER

Part 2.3 PERIODICALS (CLASS B)

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2.3.1 GENERAL RULES

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- II. Manufacturing requirements
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2.3.2 WHAT ARE PERIODICALS

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- I. Periodicals other than daily newspapers
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2.3.4 CONTRIBUTIONS TO PERIODICALS

- I. Separate registration
- II. Classification

Chapter 2. COPYRIGHTABLE MATTER

Part 2.3 PERIODICALS (CLASS B)

2.3.1 General Rules

I. Publication with notice.

a. Each separate issue of a periodical must be published with appropriate notice of copyright before that issue can be registered. (As to Publication, see Chapter 3; as to Notice, see Chapter 4.)

b. Each separate issue published with notice is to be registered as a separate work.

II. Manufacturing requirements.

a. To be registered in Class B, the following periodicals must be manufactured in the United States (see Chapter 6):

1. An English-language periodical of which the "author" (i.e., publisher) is a U. S. citizen or domiciliary. For the possibility of ad interim registration, see item III of this Part

2. A foreign-language periodical of which the "author" is a U. S. citizen or domiciliary

3. An English-language periodical by a foreign "author" first published in the United States

4. An English-language periodical by a foreign "author" which was first published outside the United States, but which has not secured copyright under the U.C.C. exemptions of sec. 9(c). For the possibility of ad interim registration, see item III of this Part.

2.3.1 General Rules (cont'd)

II. Manufacturing requirements. (cont'd)

b. No affidavit of U. S. manufacture is required for periodicals, but the application requires information concerning any portions of the work manufactured abroad.

III. Registration.

a. Domestic periodicals. Registration is required for periodicals of U. S. origin which comply with the statutory formalities. The claim should be filed on Form B, accompanied by two complete copies of the periodical and a $6.00 registration fee.

b. Foreign periodicals.

1. Ad Interim registration.

(a) Claim to ad interim copyright in a periodical manufactured and first published outside the U.S.A. in the English language should be filed within six months of publication abroad, on Form A-B Ad Interim, unless copyright has been secured by virtue of the U.C.C. exemptions of Sec. 9(c), in which event registration is optional but if applied for should be on Form A-B Foreign. Concerning deposit requirements, see 17 U.S.C., § 215, and topics 5.1.5 and 5.2.2 of this compendium.

(b) After ad interim registration, an edition of the same periodical manufactured and published in the U. S. (within 5 years) may be registered on Form B. When portions of the foreign periodical are published with notice in the U. S. within the 5-year period (e.g., a novel first published serially abroad), registration may be made in the appropriate class.

2.3.1 General Rules (cont'd)

III. Registration. (cont'd)

b. Foreign periodicals. (cont'd)

2. Foreign-language periodicals. Claim to copyright in a periodical by a foreign "author", manufactured outside the U.S.A., in a language or languages other than English, should be filed on Form A-B Foreign.

2.3.2 What are Periodicals.

I. In general. Periodicals registrable in Class B include newspapers, magazines, reviews, bulletins, etc. issued at regular intervals of less than a year, the successive issues bearing the same title (with a distinguishing number or date for each issue) and being similar in the general character of their subject matter.

Examples:

(1) A daily or weekly newspaper

(2) A literary monthly containing in each issue an installment of a novel and a number of essays, short stories, and poems by various authors

(3) A weekly journal of opinion containing in each issue a number of articles, editorials, and cartoons on current political events

(4) A weekly digest of news events

(5) A semi-annual bulletin reporting current developments in the field of biochemistry

(6) A monthly publication containing informational articles and illustrations on gardening

2.3.2 What are Periodicals (cont'd)

I. In general. (cont'd)

Examples: (cont'd)

(7) A quarterly review and forecast of business conditions

(8) A weekly circular advertising various articles of merchandise

(9) A monthly publication containing in each issue a new assortment of advertising copy with accompanying mats.

II. Annual publications.

a. Publications issued at intervals of a year or more (e.g., yearbooks, almanacs, annual or biennial reports) will not be registered in Class B (but may be registrable in Class A).

b. An annual index or a special supplement to a periodical, having the same title as the periodical, may be registrable in Class B.

III. Irregular publications. Publications issued at irregular intervals generally will not be registered in Class B (but may be registrable in Class A).

IV. Series of books. A series of books, though issued at regular intervals under a general series title, will not be registered in Class B (but may be registrable in Class A).

Examples of series of books:

(1) A number of volumes, each on a different subject; e.g., the issue successively of a book on grammar, one on history, one on economics, on chemistry, etc.

2.3.2 What are Periodicals (cont'd)

IV. Series of books. (cont'd)

Examples of a series of books: (cont'd)

(2) A series of volumes, each an individual work complete in itself; e.g., the issue bi-weekly of one of the "100 great books", the monthly selections of a book club, the issue each month of one full-length mystery story

(3) The successive issues of revised editions of a book; e.g., a directory or a technical handbook revised quarterly

(4) A single work issued in parts; e.g., the separate volumes of an encyclopedia, or of a set of twelve books comprising a training course.

V. Loose-leaf reporter material. Loose-leaf material published at intervals as additional or replacement pages for loose-leaf books is considered properly classifiable as a book, and the Office will recommend registration in Class A. If the applicant insists, the Office will register such material in Class B under the rule of doubt.

VI. Post-Office classification. The entry of a publication as second class matter at the Post Office is a persuasive indication that it may be registered as a periodical, but is not conclusive.

2.3.3 Separate Editions of a Particular Issue

I. Periodicals other than daily newspapers.

a. Where an issue of a periodical is published in two or more separate editions containing different copyrightable matter, separate registrations will be required.

2.3.3 Separate Editions of a Particular Issue (cont'd)

I. Periodicals other than daily newspapers. (cont'd)

a. (cont'd)

Examples:

(1) English, Spanish, and French editions of a magazine

(2) U.S., Canadian, and European editions of a weekly newsmagazine, in which some of the contents are changed to correspond with the local interests of readers.

b. Where the only difference between the editions is in the cover, separate registrations will not be required. If separate registrations are requested, they may be made with a cautionary letter.

Example: Ellery Rex's Mystery Magazine, published with a flashy cover for newsstand sale and a conservative cover for subscribers.

c. Where the only difference between the editions is in advertising matter, separate registrations will not be made unless the advertisements belong (or could belong) to the publisher of the periodical.

d. Where the only difference between the editions is in uncopyrightable elements such as typography, size, coloring, paper stock, etc., separate registrations will not be made, but copies of the "best edition" may be requested. See topic 5.3.1.

II. Daily newspapers.

a. Where a daily newspaper is published in two or more separate editions containing different copyrightable matter, separate registrations may be made.

2.3.3 Separate Editions of a Particular Issue (cont'd)

II. Daily newspapers. (cont'd)

a. (cont'd)

Examples·

(1) "Home," "City," "Final" and "Red Star" editions

(2) "Bronx," "Manhattan," and "Brooklyn" editions.

b. Where the Office is informed that a daily newspaper is published in separate editions containing different copyrightable matter, it may, in appropriate cases, suggest the advisability of making separate registrations. If the applicant refuses to make more than one registration, the Office may suggest the advisability of including a limiting statement in the notice on later editions (e.g., "Copyright claimed in contents of Home Edition only.")

c. Where an applicant chooses to deposit copies of all editions with a single application, only the copies of the earliest edition will be stamped with the registration numbers.

2.3.4 Contributions to Periodicals

I. Separate registration.

a. A copyrightable contribution to a periodical, if it is published with a separate notice of copyright, may be registered separately. (As to separate notice, see topic 4.2.1, IV.)

b. An unpublished manuscript intended as a contribution to a periodical is not registrable.

2.3.4 Contributions to Periodicals (cont'd)

I. Separate registration. (cont'd)

c. A contribution bearing no separate notice of copyright is not registrable separately. If the author of a contribution bearing no separate notice requests separate registration, the Office may suggest the possibility of his obtaining and recording an assignment from the publisher of the periodical.

II. Classification.

a. A print advertising articles of merchandise, published with separate notice in a periodical, is not registrable in Class B as a contribution to a periodical, but is to be registered on Form KK as a commercial print.

b. Except for commercial prints, copyrightable contributions to a periodical, bearing separate notice, may be registered in Class B (on Form BB).

c. A contribution consisting of a particular class of copyright matter (e.g., a drama, a piece of music, a map, a photograph, etc.), if it bears an appropriate notice, may be registered in that particular class (a drama in Class D, etc.) if the applicant so desires. However, if book material is filed with Form A, Form BB will be suggested.

d. Copyrightable matter (e.g., a pictorial emblem) to be reproduced in each issue of a periodical as part of the format is not registrable in Class B as a contribution. But if it bears a separate notice, it may be registered separately in the appropriate class (e.g., a pictorial emblem in Class K).

End of Part 2.3.

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Chapter 2

COPYRIGHTABLE MATTER

Part 2.4 WORKS PREPARED FOR ORAL DELIVERY (CLASS C)

Outline of Topics

2.4.1 WHAT IS A "WORK PREPARED FOR ORAL DELIVERY"?

I. Statutory provisions
II. Definition
III. Examples

2.4.2 ONLY UNPUBLISHED WORKS REGISTRABLE IN CLASS C

I. Published works not registrable
II. Later publication
III. No notice required

2.4.3 ONLY NON-DRAMATIC TEXTUAL WORKS REGISTRABLE IN CLASS C

I. Dramatic material
II. Copy deposited should be a textual manuscript

2.4.4 PREPARATION AND SUITABILITY FOR ORAL DELIVERY

I. Preparation in the first instance for oral delivery
II. Suitability for oral delivery

Chapter 2. COPYRIGHTABLE MATTER

Part 2.4 WORKS PREPARED FOR ORAL DELIVERY (CLASS C)

2.4.1 What is a "Work Prepared for Oral Delivery"?

I. Statutory provisions. Class C comprises "lectures, sermons, addresses (prepared for oral delivery)." (17 U.S.C. §5(c).) The statute also refers to "a lecture, sermon, address or similar production" (17 U.S.C. §1(c)), which presumably covers the same class of works.

II. Definition. A "work prepared for oral delivery" is an unpublished, nondramatic textual work written in the first instance for oral delivery before an audience, or on sound recordings, motion picture sound tracks, etc. It is to be distinguished from a work which, though capable of oral delivery, was written in the first instance for publication and individual reading.

III. Examples:

a. The manuscript of a classroom lecture, of an evangelist's sermon, of an after-dinner speech, or of a debate

b. The script of a non-dramatic radio or television broadcast or audition

c. The script of a motion picture sound track

d. The text of an entertainer's monolog

e. The text of a talk to accompany the showing of a filmstrip

f. The story to be delivered by a narrator in conjunction with a pageant

g. The text of a children's story, or of Spanish lessons, to be recorded on phonograph records

2.4.2 Only Unpublished Works Registrable in Class C.

I. Published works not registrable. Even though a work has been prepared in the first instance for oral delivery, it cannot be registered in Class C if publication has taken place before the application is submitted. A work of this type should be registered in Class A as a "book," if published with the required copyright notice.

Example: The text of a speech by the president of General Motors, which is released to the press in mimeographed form on the morning of the day the speech is to be delivered.

II. Later publication. When a work that has been registered in Class C is later published with notice, registration should be made as a "book" in Class A, even if the text is exactly the same.

III. No notice required. Since only unpublished works are registrable in Class C, no notice requirements pertain to this class.

2.4.3 Only Non-dramatic Textual Works Registrable in Class C.

I. Dramatic material.

a. If the work appears clearly to be a dramatic composition (that is, if it has a plot and contains dialogue and directions concerning the action or production) an application on Form C will be questioned, and a new application on Form D will be suggested. (As to what constitutes a dramatic composition, see Part 2.5.)

b. If the dramatic character of the work is doubtful, or if the dramatic element is not the predominant feature of the work, the claimant's choice of Class C will be accepted without comment.

2.4.3 Only Non-dramatic Textual Works Registrable in Class C. (cont'd)

I. Dramatic material. (cont'd)

b. (cont'd)

Example: The script for a commercial film sound track consisting mainly of straight narration, but including two short dramatic scenes.

II. Copy deposited should be a textual manuscript.

a. As a rule the copy deposited for registration in Class C should be a manuscript containing the complete text of the work as it has been, or is expected to be, delivered. A mere outline or collection of notes is not registrable in Class C (see item 2.4.4.II.a., below).

b. A sound recording of a work prepared for oral delivery is not acceptable for registration in Class C. When a sound recording is deposited, the Office will reject the claim but point out to the applicant the possibility of writing out the text in manuscript form and then making registration on the basis of the manuscript. (As to the problem of the sale of recordings as publication, see item 3.1.3.IV.)

c. Where the copy deposited consists of Class C material combined with other material, the practice to follow depends upon the nature of the other material.

1. Where the other material, while registrable in unpublished form, cannot be considered an actual part of the work prepared for oral delivery, separate registrations will be suggested.

Example: The text of a television commercial advertising electrical appliances, and some unpublished drawings intended to be used in magazine advertisements of the appliances.

2.4.3 Only Non-dramatic Textual Works Registrable in Class C. (cont'd)

II. Copy deposited should be a textual manuscript. (cont'd)

c. (cont'd)

2. Where the other material is not registrable but is inseparable from the registrable part, entry will be made without correspondence, unless it is obvious that the applicant is under a misapprehension.

Example: A lecture on a bookkeeping system with 2 or 3 illustrative drawings of blank forms.

3. Where the other material is not registrable, and cannot be considered an actual part of the work prepared for oral delivery, the applicant will be requested to redeposit the work with the unregistrable material omitted.

Example: A textual work purporting to be a lecture describing "the Hamframatz Method for Computing Unilateral Bunion Curves," accompanied by a handmade computing device containing no copyrightable material.

4. Where the other material is registrable in unpublished form and can be considered a part of the work prepared for oral delivery, the following practices apply:

(a) If application is filled on Form C, and the portion of the work prepared for oral delivery will support a registration in Class C, a single registration in the applicant's choice of class may be made, even though the other material predominates.

2.4.3 Only Non-dramatic Textual Works Registrable in Class C. (cont'd)

II. Copy deposited should be a textual manuscript. (cont'd)

c. (cont'd)

4. (cont'd)

(a) (cont'd)

Example: A one-page speech, accompanied by eight drawings to be used as illustrations by the speaker.

(b) If application is filed on Form C and the portion of the work prepared for oral delivery is minimal or somewhat borderline, but there is a substantial amount of other material, registration in the class appropriate to the other material will be suggested.

Example: A short two-line narration intended to be spoken as part of an original musical composition.

(c) If both the Class C material and the other material are substantial and fairly evenly balanced, the applicant's choice of class will generally be accepted without correspondence although in appropriate cases the possibility of separate registrations may be pointed out.

Example: A narration extolling the virtues of chicken chow mein, accompanied by original background music which was composed to be played with the narration but is not integrated with it, can be registered in Class C or Class E; or the two elements can be registered separately.

2.4.4 Preparation and Suitability for Oral Delivery.

I. Preparation in the first instance for oral delivery.

a. A manuscript that has clearly been prepared in the first instance for publication and individual reading, rather than for oral delivery before an audience, is not registrable in unpublished form, although in rejecting the claim the Office may point out the possibility of registration in Class A as a "book" after publication with notice.

Examples:

(1) A 300-page novel

(2) The usual poem

(3) A manuscript consisting primarily of statistical tables and formulae

(4) A Ph.D. dissertation

b. In determining whether a manuscript constitutes a work prepared for oral delivery or an unpublished book, some significance may be attached to the form in which the work is presented, and the presence of such elements as a title page, preface, foreword, table of contents, chapter headings, bibliography, footnotes, index, references to "the reader," specific page references in the text, illustrations, etc. The presence of some of these elements need not necessarily be conclusive, however.

c. If the applicant insists that the manuscript was prepared in the first instance for oral delivery, and this does not seem altogether implausible, registration may be made in Class C.

2.4.4 Preparation and Suitability for Oral Delivery (cont'd)

I. Preparation in the first instance for oral delivery. (cont'd)

d. The mere fact that the claimant has read, or intends to read, his work orally to a few friends does not make it a "work prepared for oral delivery," if it is clear that the work was prepared in the first instance for publication.

Example: Claimant states in a letter of transmittal that he has sent his work to various magazines.

II. Suitability for oral delivery.

a. To be registrable in Class C, a work must be complete enough for actual oral presentation in its present form, without substantial further development.

1. An outline, synopsis, or description of the idea of a television or radio program, stage show, lecture series, etc., is not registrable in Class C, even if fairly detailed.

2. Where the applicant deposits an outline or synopsis of a series of programs, together with one sample script, the applicant will be asked to detach the outline or synopsis and register the script alone, and will be cautioned that registration for the script will not protect the idea or plan, the future scripts in the series, or the series as a whole.

3. A general outline of the ideas or information to be expounded in a speech, such as a list of topic words or sentences, or a group of brief notes, is not registrable in Class C. However, if a script is actually capable of oral delivery, the fact that it is in outline form will not preclude registration in Class C.

2.4.4 Preparation and Suitability for Oral Delivery. (cont'd)

II. Suitability for oral delivery. (cont'd)

b. A script in sufficient detail for delivery substantially as written is registrable as a work prepared for oral delivery, even though the script indicates that other material is to be interpolated or added.

Examples:

(1) Script containing occasional references to the use, during the course of the speech, of unspecified pictures as illustrations.

(2) Script consisting of the master of ceremonies' remarks during the course of a panel show.

(3) Script consisting of the interviewer's portion of a television interview.

End of Part 2.4.

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Chapter 2

COPYRIGHTABLE MATTER

Part 2.6 MUSIC (CLASS E)

Outline of Topics

2.6.1 WHAT ARE MUSICAL COMPOSITIONS

  I. Generally
  II. Evaluation of musical content
  III. Evaluation of textual content
  IV. Books of music

2.6.2 NATURE AND COMPLETENESS OF COPIES DEPOSITED

  I. Conventional notation not necessary
  II. Sound recordings not acceptable
  III. Completeness of copies deposited

2.6.3 REQUIREMENTS OF REGISTRATION FOR MUSICAL COMPOSITIONS

  I. Unpublished musical compositions
  II. Published musical compositions

2.6.4 NEW VERSIONS OF MUSICAL COMPOSITIONS

  I. In general
  II. Adaptations or arrangements
  III. Revisions or additions
  IV. Editing
  V. New lyrics
  VI. Compilations

CHAPTER 2. COPYRIGHTABLE MATTER

Part 2.6 MUSIC (CLASS E)

2.6.1 What are musical compositions.

I. Generally. To constitute a "musical composition" for purposes of copyright registration in Class E, a work must generally contain notations representing a succession of musical sounds, usually in some definite melodic and rhythmic pattern. The work may consist of music alone, or of words and music combined. A work consisting of words alone is not registrable in Class E.

II. Evaluation of musical content.

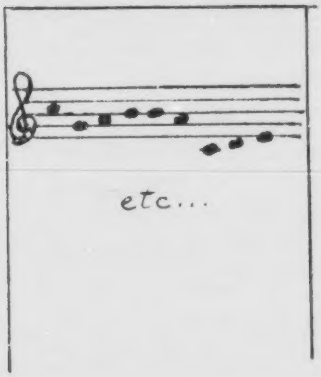
a. Three elements are usually present in a musical composition: melody (a succession of single tones), rhythm (groupings of tones according to accent and time value), and harmony (chords of differing pitch in various related progressions or modulations). The presence of all or any one or two of these elements may be considered to constitute a musical composition. However, before making registration for certain unpublished works, it may be advisable to write to the applicant, pointing out that protection extends only to the material actually deposited, and suggesting that in his own interest he develop his manuscript to supply the missing element.

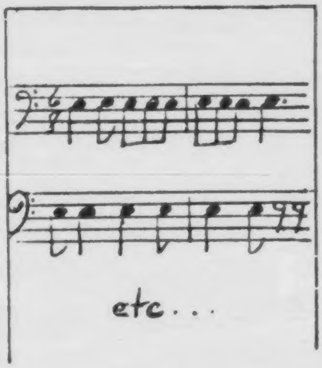
2.6.1 What are musical compositions. (cont'd)

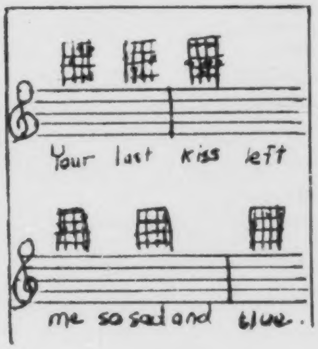
II. Evaluation of musical content. (cont'd)

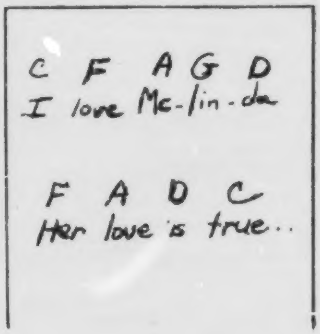
a. (cont'd)

Examples:






Your last kiss left
me so sad and blue.


C F A G D
I love Mc-lin-da
F A D C
Her love is true..

b. In determining whether a work is a "musical composition" for purposes of copyright registration, the usual standards of musical criticism have no application. The presence of notes does not necessarily presuppose the existence of a tune or of any relationship to a particular mode or key.

c. To support a registration in Class E, a work of music must represent creative authorship.

2.6.1 What are musical compositions. (cont'd)

II. Evaluation of musical content. (cont'd)

c. (cont'd)

1. A musical score having no element of original composition (e.g., a group of diatonic and chromatic scales for beginning students) is not registrable unless compilation is present. (See topics 2.6.1.IV.c., 2.6.4.VI.)

2. A phrase consisting of a few musical notes (e.g., the NBC signature; clock chimes), standing alone, would not have sufficient substance to constitute a composition.

3. To be registrable in Class E, it is not necessary that all of the underlying musical themes in the composition be original. Variations, popular adaptations, arrangements, and other versions of public domain themes (or of copyrighted themes when permission to use has been secured) may be registered as new works of authorship. (See topic 2.6.4.)

   Examples:

   (a) Variations on a theme by Paganini

   (b) A symphonic arrangement of "Yankee Doodle"

   (c) A popular song based on a theme from Chopin's "Fantasie Impromptu"

4. A work consisting chiefly of text or pictorial matter, although it deals with the subject of music and contains incidental fragments of musical scores, is not registrable in Class E.

   Examples:

   (a) A book on some musical subject, with brief musical quotations to illustrate the text

   (b) An advertising print containing a few bars of music to convey the idea of music

2.6.1 What are musical compositions. (cont'd)

II. Evaluation of musical content. (cont'd)

4. (cont'd)

Examples: (cont'd)

(c) A book explaining a new system of musical notation, illustrated by excerpts from familiar works in the public domain

(d) A piano instruction chart containing text and diagrams showing notes on the staff and on the piano keyboard

III. Evaluation of textual content.

a. Song lyrics.

1. The words or lyrics of a song are a component part of the musical composition and may be registered together with the music in published or unpublished form.

2. The words of a song, without music, are not of themselves a musical composition, and are not registrable in Class E.

(a) The words of a song, without the music, are not registrable in unpublished form, even if the manuscript indicates that they are to be sung to a well-known melody.

(b) Words alone may be registered in Class A as a book when published with notice.

3. The Office prefers that the words of a song be written above or beneath the notes to which they are sung, but this is not a requirement for registration. A manuscript may be registered in Class E even if the words are on one sheet and the music on another.

2.6.1 What are musical compositions. (cont'd)

III. Evaluation of textual content. (cont'd)

b. Music with text. Where the copy deposited consists of Class E material combined with textual material, the practice to follow depends upon the nature of the textual material:

1. If the work consists of registrable music with a relatively small amount of incidental text (e.g., brief notes about the composer, references to old music from which the theme is derived, etc.), registration may be made in Class E in either published or unpublished form.

2. If the work is submitted as unpublished and it consists of registrable music and a substantial amount of text which is in the public domain (e.g., incidental music for a reading of Poe's poems), registration may be made in Class E in either published or unpublished form.

3. If the work is submitted as unpublished and it consists of registrable music and a substantial amount of original text which is registrable only in published form, the applicant will be requested to redeposit the manuscript with the text omitted and to file a new application omitting any reference to the text.

4. If the work is submitted as unpublished and the text consists of a work prepared for oral delivery (e.g., a monolog with musical accompaniment; a musical composition with narration) the

2.6.1 What are musical compositions. (cont'd)

III. Evaluation of textual content. (cont'd)

b. Music with text. (cont'd)

4. (cont'd)
following practices apply:

(a) If application is filed on Form E, and the musical portion of the work will support a registration in Class E, a single registration in the applicant's choice of class may be made, even though the Class C material predominates.

(b) If application is filed on Form E and the musical portion of the work is de minimis or somewhat borderline, but there is substantial Class C material, registration in Class C will be suggested.

(c) If both the Class E and Class C material are substantial and fairly evenly balanced, the possibility of making separate registrations may be pointed out, although a single registration in the class applied for will not be refused.

5. If the work is submitted as unpublished and it consists of registrable music and text which is dramatic in nature, registration for the work as a whole in Class D as a "dramatico-musical composition" may be appropriate.

2.6.1 What are musical compositions. (cont'd)

III. Evaluation of textual content. (cont'd)

b. Music with text. (cont'd)

6. If the work is submitted as published and it consists of registrable music and a substantial amount of original text, an application on Form E will generally be accepted; or, if separate notices have been used, separate registrations may be suggested in Classes E and A.

IV. Books of music.

a. In general.

1. One or more pieces of new music or new arrangements of existing music, published in book form with appropriate music notice, may be registered in Class E. Registration in Class A will generally be discouraged unless the applicant clearly wishes it, or unless the notice would be more appropriate for Class A. (See topic 2.6.1.IV.d., below.)

2. A published book consisting principally of new music or new arrangements of existing music, though also containing a substantial amount of other copyrightable matter (e.g., an introduction, pictorial illustrations), may be registered in either Class E or Class A.

b. Books of existing music with new matter.

1. A book of music containing both reprintings of existing compositions and new musical works may be registered in Class E.

2.6.1 What are musical compositions. (cont'd)

IV. Books of music. (cont'd)

b. Books of existing music with new matter. (cont'd)

2. A book consisting entirely of previously published music, in which the only new matter consists of non-musical material, will not be registered in Class E (unless the work represents a new compilation or contains copyrightable editing; see topics 2.6.1.IV.c. and 2.6.4.IV. and VI, below). The book may be registrable in Class A, or in some other class appropriate to the new matter.

Examples:

(a) Chopin Études, with new text of suggestions for teachers and students.

(b) Bach's "Well-Tempered Clavichord" with a new foreword on the historical development of keyboard instruments.

(c) The song "America" with patriotic pictures and emblems.

c. Compilations. (See topic 2.6.4.VI)

1. Published and unpublished compilations of original songs, of original arrangements of songs, or of songs with original lyrics, should generally be registered in Class E.

2. Where the only registrable element in a published collection

2.6.1 What are musical compositions. (cont'd)

IV. Books of music. (cont'd)

c. Compilations. (See topic 2.6.4.VI) (cont'd)

2. (cont'd)
of previously published music is the compilation, the preferable classification is Class A, although Form E may be accepted if after correspondence the applicant prefers it. If the collection is unpublished, it should be suggested to the applicant that registration be deferred until after publication with notice, but registration in Class E will not be refused.

d. Position of notice. The position of the notice of copyright may influence the classification of a published book of music.

1. When the notice is on the title page, registration may be made either in Class A or in Class E. If Form A is received, the Office will generally suggest the filing of a new application on Form E if the work contains a substantial amount of new music.

2. When the notice is on the first page of music, a Class E application will generally be required. If it seems likely that the notice on the first page of music was intended to cover only the composition appearing on that page, rather than the collection as a whole, registration may be made with a cautionary letter.

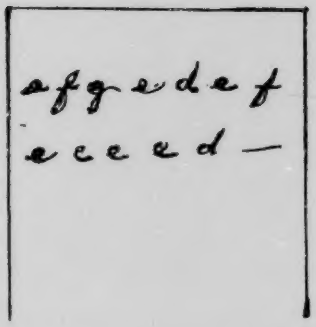
3. When the notice is on the back of the title page, Form A will be accepted. If the applicant submits Form E, registration may be made with a cautionary letter.

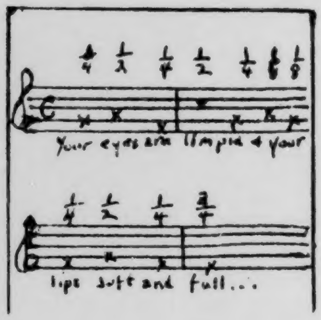
2.6.2 Nature and completeness of copies deposited.

I. Conventional notation not necessary. As long as it is intelligible and capable of being read and visually perceived, a work may be accepted for registration in Class E, even if it does not employ the conventional form of music notation.

a. Copies employing letters, numbers, words, symbols, or other indicia may be accepted if it seems possible for someone to decipher the music in the work.

Examples:





b. A copy containing a score appropriate for the notation of electronic or concrete music may be accepted.

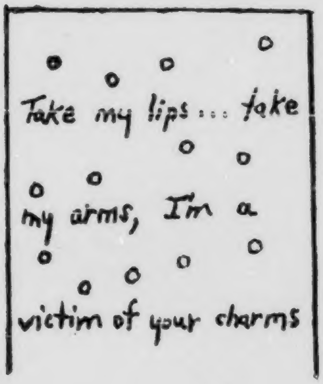
c. However, if the work is unpublished and it seems impossible for anyone to determine the music from the copies, the applicant will be requested to prepare a new manuscript for deposit.

2.6.2 Nature and completeness of copies deposited. (cont'd)

I. Conventional notation not necessary. (cont'd)

c. (cont'd)

Example:



II. Sound recordings not acceptable. A sound recording of a musical composition is not acceptable for registration in Class E. When a sound recording is deposited, the Office will reject the claim but point out to the applicant the possibility of writing out the composition in manuscript form and then making registration on the basis of the manuscript. (As to the problem of the sale of recordings as publication, see topic 3.1.3.IV.)

III. Completeness of copies deposited.

a. Unpublished manuscripts.

1. As long as the manuscript appears to contain copyrightable music, no effort will generally be made to determine if the words and music are complete and if the work is in finished form. (But see paragraphs 2 and 3, below.)

2.6.2 Nature and completeness of copies deposited. (cont'd)

III. Completeness of copies deposited. (cont'd)

a. Unpublished manuscripts. (cont'd)

1. (cont'd)

Example: Where the manuscript contains music for verse and chorus, but includes words for the chorus only, the claim will not be questioned.

2. Where the applicant states that the work is incomplete, but indicates that he will complete and submit the finished work shortly, the Office may suggest that registration be deferred until the work has been completed.

3. Where the applicant appears to have skipped a page in copying his manuscript, or where the words end in the middle of a sentence, the Office will question the completeness of the manuscript.

b. Orchestrations, bandstrations, and instrumental parts.

1. Where the copies deposited in connection with a published work for orchestra or band consist only of the piano-conductor or condensed score, and there are indications on the copies that other instrumental parts or band books have been published with it as a unit, the Office will request deposit of all parts or books. The same practice should be followed where the part originally deposited is a full score, even though a full score contains all the music in the other parts in a different form.

2.6.2 Nature and completeness of copies deposited. (cont'd)

III. Completeness of copies deposited. (cont'd)

b. Orchestrations, bandstrations, and instrumental parts. (cont'd)

2. Where the copies deposited indicate that the work is a part for a certain kind of instrument (e.g., "for Bass Clef Instruments"), and that parts for other instruments are also published with it as a unit, the Office will request deposit of all parts, even if they represent mere transpositions of the material on hand.

3. Where an unpublished manuscript consists of a "piano part" or "piano conductor" part, registration will generally be made without correspondence or annotation.

2.6.3 Requirements of registration for musical compositions.

I. Unpublished musical compositions.

a. In general. Claims to copyright in unpublished musical compositions may be registered in Class E. (As to publication, see Chapter 3; as to the formalities of registration, see chapters 5, 9, and 10.)

b. Two or more versions.

1. When an applicant submits two or more different unpublished arrangements or other versions of the same composition, separate registrations will be encouraged. A single registration may be considered if the applicant insists, provided the authorship of each version is the same, and a single identifying title is given.

   Examples:

   (a) Arrangements of a composition for piano and for dance orchestra

   (b) English, French, and Spanish versions of a popular song, with different lyrics and minor changes in tempo and phrasing

2. When an applicant submits two or more unpublished versions of the same composition, in which the only differences are in uncopyrightable elements, they may be registered together on a single application.

   Example:

   The same music in different keys

2.6.3 Requirements of registration for musical compositions. (cont'd)

I. Unpublished musical compositions. (cont'd)

c. Collections of unpublished musical compositions. A collection of two or more unpublished musical compositions may be registered on one application when all of the following conditions are met:

1. The collection is assembled in an orderly arrangement; and
2. The collection bears a single title identifying the collection as a whole; and
3. The collection as a whole is the subject of a single claim of copyright; and
4. All the compositions are by the same author; or, if they are by different authors, the collection as a whole represents the work of a single author in its compilation or editing.

II. Published musical compositions.

a. In general. Claims to copyright in musical compositions published with the appropriate copyright notice may be registered in Class E. (As to publication, see chapter 3; as to notice, see chapter 4; as to the formalities of registration, see chapters 5, 9, and 10.)

b. Publication of registered manuscript. When a musical composition, previously registered in unpublished form, is published with appropriate notice, registration should again be made to cover the published edition. (17 U.S.C. §12.)

c. Books of music. See topic 2.6.1.IV.

2.6.4 New versions of musical compositions.

I. In general. In order for registration of a new version of an existing musical composition to be valid, the composition employed must be in the public domain or, if copyrighted or protected under common law, must be used with the owner's permission.

a. Frequently the claimant of copyright in the new version is also the owner of copyright in the composition employed in the new version, in which case no question of permission arises.

b. In all cases the Copyright Office will assume that use of the existing material is authorized unless there are fairly clear indications that permission has not been obtained (e.g., where the claimant tells us so.) In the latter case, the Office will not refuse registration for the new version, but will suggest the advisability of securing permission before registering a copyright claim or publishing the work.

II. Adaptations or arrangements. An adaptation or arrangement of existing music, involving original composition, constitutes a registrable new musical work.

Examples:

a. An adaptation of an organ work for orchestra

b. A new piano accompaniment for an old English vocal air

c. An arrangement for dance orchestra of the songs from "The Boy Friend"

III. Revisions or additions.

a. The substantial revision of the score of existing music, or the addition to an old score of a substantial amount of new music, creates a registrable new version.

Examples:

1. The rewriting of a substantial portion of the music of a previously copyrighted composition

2.6.4 New versions of musical compositions. (cont'd)

III. Revisions or additions. (cont'd)

a. (cont'd)

Examples: (cont'd)

2. The addition of a piano accompaniment to a copyrighted lead sheet

3. A medley of old songs joined together by the interpolation of new music

b. Minor changes in existing music, such as any musician might readily make, and which are not substantial enough to constitute original composition, do not create a registrable new version.

Examples:

1. The change of a few notes in the melody of "The Star Spangled Banner"

2. Mere transposition of an old song into a different key

3. The omission of two measures from an old song

IV. Editing. Whether editing of a musical composition constitutes registrable "new matter" depends upon its nature and extent. Assuming it is sufficient to constitute creative authorship, editing will be regarded as a "writing" registrable in Class E.

V. New lyrics. (See also topic 2.6.1.III.a.)

a. The addition of copyrightable new words to existing music creates a new version registrable in Class E.

2.6.4 New versions of musical compositions. (cont'd)

V. New lyrics. (cont'd)

a. (cont'd)

Examples:

1. A new verse to "America the Beautiful"
2. New words to be sung to the melody of Schumann's "Traumerei"
3. English translations of the words of Russian folk songs, accompanied by the music

b. The setting of an existing poem to existing music, if it involves some element of creative selection and combination, may constitute a new version or adaptation, registrable as music.

c. Minor changes in the words of an existing lyric (e.g., change of the words "Mary dear" to "Ellen dear") will not constitute a new version.

VI. Compilations. (See also topic 2.6.1.IV.c.)

a. A published or unpublished collection of previously published musical works, in which the assembling, selection, or combination of works represents some degree of original authorship, constitutes a registrable compilation.

Examples:

1. A collection of compositions for the violin by various composers
2. A graded selection of Schumann's composition for the piano
3. An album of Piano arrangements titled "Hits of the Forties"

b. The mere republication together of several

2.6.4 New versions of musical compositions. (cont'd)

VI. Compilations. (cont'd)

b. (cont'd)
previously published musical works, where no appreciable degree of original authorship was involved in putting them together, does not constitute a registrable compilation.

Examples:

1. The songs from "Oklahoma"
2. Beethoven's twelve contra dances
3. Mozart's Symphonies Nos. 39, 40, and 41

End of Part 2.6.

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Chapter 2

Copyrightable Matter

Part 2.8

WORKS OF ART
(CLASS G)

Outline of Topics

2.8.1 IN GENERAL

- I. Copyrightable matter subject to registration in Class G
    - a. Constituent elements
    - b. Forms of embodiment

2.8.2 CLASSIFICATION OF WORKS OF ART

- I. Nature of the material
    - a. Single-page works
    - b. Folders and the like
    - c. Multi-page works
    - d. Contributions to "books" or "periodicals"
    - e. Work of art and text combined
    - f. Three-dimensional works
    - g. Utilitarian articles
- II. Purpose, function, or use for which the material is designed
    - a. Drawings or plastic works of a scientific or technical character
    - b. Commercial prints or labels

2.8.3 REGISTRATION REQUIREMENTS

I. Copyrightable subject-matter

- a. Pictorial or graphic material
- b. Sculptural material
- c. New matter
- d. Utilitarian articles

II. Formalities of registration

- a. Deposit of copy or copies

Chapter 2

COPYRIGHTABLE MATTER

Part 2.8

WORKS OF ART (CLASS G)

2.8.1 In general

I. Copyrightable matter subject to registration in Class G

a. Constituent elements

1. Pictorial or graphic material. Class G is appropriate for the registration of published and unpublished pictorial or graphic works containing original authorship of a copyrightable nature, such as, for example, paintings, drawings, etchings, engravings, and two-dimensional abstract or representational designs.

2. Sculptural material. Class G is appropriate for the registration of published and unpublished three-dimensional sculptural works containing original authorship of a copyrightable nature, such as, for example, statuary, carving in relief, and three-dimensional abstract or representational designs.

2.8.1 In general (cont'd)

I. Copyrightable matter subject to registration in Class G (cont'd)

a. Constituent elements (cont'd)

3. Text. Class G is not appropriate for works which are primarily textual, although the presence of captions and incidental text in a work which is primarily pictorial, graphic, or sculptural will not prevent registration in Class G.

b. Forms of embodiment. Copyrightable graphic, pictorial, or sculptural material capable of supporting registration in Class G may be embodied in a variety of forms, including both ornamental and useful articles.

1. Ornamental articles. This category includes all decorative articles designed primarily to beautify, embellish, or adorn, such as, for example, drawings, paintings, carvings, statuary, wall plaques, murals, ceramic figurines, tapestries, scenic wallpaper, mosaics, stained glass, jewelry, artificial flowers, dolls, and toy animals.

2. Useful articles. This category includes all articles designed primarily to serve a utilitarian function, such as, for example, lamps and lighting fixtures, ceramic tiles, china and glassware, textile fabrics, lace, and ashtrays. (See topics 2.8.2.II and 2.8.3.I.d.)

2.8.2 Classification of works of art

I. Nature of the material

a. Single-page works. A single-page work of art is one whose content appears on one or both sides of a leaf, sheet, or their equivalent. A painting on canvas, board, or the like, may be considered a single-page work for purposes of classification.

1. Pictorial or graphic material. Class G is the appropriate category for the registration of all individual pictorial or graphic works of art, in either published or unpublished form.

(a) Class H. If the copyright claim is based only upon a published reproduction of an existing work of art and does not extend to the underlying work reproduced, Class H is the more appropriate category for registration. (*See* Part 2.9.)

(b) Class I. If the pictorial or graphic material is designed for a scientific or technical use, such as a mechanical drawing, registration in Class I is more appropriate. (See Part 2.10.) However, if the work is primarily aesthetic in its appeal or in the effect it produces, as for example, a drawing depicting the exterior of a building in perspective with trees and shrubbery, registration in Class G may not be inappropriate.

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

a. Single-page works (cont'd)

1. Pictorial or graphic material (cont'd)

(c) Class K. If the copyright claim is based only upon a published reproduction of a work which is not a work of fine art, registration in Class K on Form K is appropriate. (See Part 2.12.)

b. Folders and the like. A published pictorial or graphic folder, leaflet, or the like, which opens out so as to form a single sheet, is considered a single-page work for purposes of classification. Thus, for example: twelve color reproductions of original paintings appearing on the twelve faces of an accordion-like folder published by the museum in which the paintings are exhibited.

1. Single pictorial or graphic work of art on more than one page. A published single pictorial or graphic work of art whose content extends continuously across two or more pages may be considered a single-page work for purposes of classification, as for example: an original engraving of costumed figures in procession reproduced across the three faces or folds of a triptych-like greeting card.

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

c. Multi-page works. A multi-page work of art is one whose content appears on two or more pages, sheets, or their equivalent.

1. Published pictorial or graphic material. Class A is generally appropriate for the registration of claims to copyright in published multi-page collections and compilations of pictorial or graphic works of art which have been published together as a unit and are identified by a common title, such as, for example: a portfolio of twenty original paintings selected by the artist from his own previously unpublished work and reproduced in color with a textual introduction. NOTE: A single registration in Class G may also be appropriate in cases where the copyright claim is based essentially upon original artwork, such as, a set of original watercolor prints published in a portfolio without any appreciable amount of text.

(a) Copyright notice insufficient for Class A. If a multi-page pictorial or graphic work of art has been published with a copyright notice which fails to satisfy the notice requirements prescribed by the law for "books," registration in Class A will not be possible. Nevertheless, if such a work bears a

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

c. Multi-page works (cont'd)

1. Published pictorial or graphic material (cont'd)

(a) Copyright notice insufficient for Class A (cont'd)

notice which satisfies the requirements of the law prescribed for material registrable in Classes F through K, registration may be made on that basis under the rule of doubt. The following procedures apply:

(1) Application Form A received. If an application has been submitted on Form A, registration in Class A will be rejected. In such a case, the Office may offer a single registration in Class G on Form G on the basis of the pictorial or graphic material which the work contains, informing the applicant of the doubtful nature of the registration.

(2) Application Form G received. If an application has been submitted on Form G, registration in Class G may be considered

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

c. Multi-page works (cont'd)

1. Published pictorial or graphic material (cont'd)

(a) Copyright notice insufficient for Class A (cont'd)

(2) Application Form G received (cont'd)

on the basis of the pictorial or graphic material which the work contains. In such case, the Office will inform the applicant of the doubtful nature of the registration.

(3) No application received. If no application has been received, or if an opinion is requested, the Office will point out to the applicant why registration in Class A is not possible. In such a case, the Office may offer a single registration in Class G on Form G on the basis of the pictorial or graphic material which the work contains, informing the applicant of the doubtful nature of the registration.

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

c. Multi-page works (cont'd)

1. Published pictorial or graphic material (cont'd)

(b) Separate registration of individual work of art. The mere fact that two or more pictorial or graphic works of art have been published together in multi-page form and are identified by a common title will not prevent the separate registration on Form G of individual pictorial or graphic works of art which bear a separate copyright notice.

2. Unpublished pictorial or graphic material. A collection of unpublished pictorial or graphic works of art which are the subject of a single claim of copyright may be considered for registration together as a unit in Class G on Form G, provided the pictorial or graphic material constitutes a single work of common authorship which can be identified as a whole by a single title.

d. Contributions to "books" or "periodicals." An original pictorial or graphic work of art first published in the form of a contribution to a "book," newspaper, magazine, or other "periodical," may be considered for registration in Class G,

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals" (cont'd)

provided the contribution contains its own separate copyright notice. However, if the contribution includes a substantial amount of text, or consists of many pictorial or graphic works of art, a single registration in either Class A or in Class B may be more appropriate, depending upon the form of publication.

1. Class A. A single registration in Class A is appropriate for a work which contains text or other "book" material and was first published in the form of a contribution to a "book," subject to the requirements explained in Part 2.2; see also topic 2.8.2.I.c.1.

Example:

> Included as a part of a published educational kit for elementary school children is a set of ten reproductions of original watercolor paintings never previously published which depict the colonial architecture of New England. Each reproduction bears a copyright notice acceptable for "book" material, together with three or four paragraphs of textual commentary on the particular subject depicted. Practice:

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals" (cont'd)

1. Class A (cont'd)

Example (cont'd)

> The set of ten reproductions may be accepted for a single registration in Class A on Form A as a contribution to a "book." However, if the applicant insists on Class G, a single registration may be made on Form G.

2. Class B. A single registration in Class B on Form BB is appropriate for a work which contains text or other "book" material and was first published in the form of a "contribution to a periodical," subject to the requirements explained in Section 2.3.4. However, even if the contribution is wholly pictorial or graphic, registration may be considered either on Form BB or in Class G on Form G, depending upon the applicant's choice.

Example:

> An eight-page supplement to the Sunday edition of a newspaper is devoted entirely to an autobiographical article by a local artist, several of whose original

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals" (cont'd)

2. Class B (cont'd)

Example (cont'd)

paintings are reproduced in color and published for the first time in the supplement. A copyright notice acceptable for a "contribution to a periodical" appears on the front page of the supplement. Practice: The supplement may be accepted for a single registration in Class B on Form BB as a "contribution to a periodical." However, if the applicant insists on Class G, a single registration may be made on Form G, even though the extent of protection given to the textual material by such registration is doubtful.

e. Work of art and text combined. The presence of captions and incidental text in a work of art will not prevent registration in Class G. However, if the copyrightable contents of a work which is pictorial, graphic, or sculptural in form are entirely textual, registration in Class G is not authorized.

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

e. Work of art and text combined (cont'd)

1. Published works. If the textual material in a work predominates, or if the principal copyrightable element is textual, registration in Class A may be more appropriate (*See* Part 2.2), or, under certain circumstances, in Class B on Form BB (*See* topics 2.3.4.II and 2.8.2.I.d.)

2. Unpublished works. If the textual material is substantial and it appears that copyright is being claimed in both text and the work of art, the claim should not be registered, until the scope of registration in Class G has been explained to the applicant. Generally, unpublished textual material (except captions and incidental text) should be separated from the copy deposited, wherever possible, and returned to the applicant. Unpublished textual material is ordinarily not entitled to copyright registration. However, works prepared for oral delivery and dramas are exceptions. (*See* Parts 2.4 and 2.5.)

f. Three-dimensional works. Class G is the appropriate category for the registration of claims to copyright in both published and unpublished three-dimensional works of art containing a substantial amount of original sculpture. Copyrightable sculpture includes statuary, abstract and

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

f. Three-dimensional works (cont'd)

representational carvings, bas-relief, and the like, which are commonly executed in hard material such as marble, bronze, glass, or wood. Sculptural authorship may also be embodied in works which are shaped, cast, or molded, such as, for example, a ceramic figurine, a plaster of Paris plaque in bas-relief, or a "plastic" toy formed from one of the commonly known synthetic chemical derivatives such as styrenes, vinyl compounds, or acrylic resins. Sculptural authorship may also be embodied in other materials such as, for example: a molded chocolate rabbit, a stuffed toy doll, or a floral design decorating a cake. However, a work may be three-dimensional in form and yet lack authorship of a sculptural nature. Thus, a work consisting of two-dimensional pictorial prints reproduced on separate pieces of cardboard which are interlocked at right angles with one another so as to produce an illusion of depth would not be considered sculpture in the copyright sense. (See also topic 2.8.3.I.)

g. Utilitarian articles. Class G is appropriate for the registration of a copyrightable work of art, even though it is embodied in an article of utility. (See also topic 2.8.2.II.) Regardless of utility or commercial value, any work must contain sufficient copyrightable matter to support registration. (See topic 2.8.3.I.d.)

2.8.2 Classification of works of art (cont'd)

II. Purpose, function, or use for which the material is designed. Generally, registration may be made in Class G regardless of the purpose, function, or use for which a work of art is intended. Thus, for example, registrability would not be affected by the fact that (1) a painting is to be used as decoration on metal serving trays, or (2) a hand-carved bracket is to be used as a wall shelf. (See also topic 2.8.2.I.g.)

a. Drawings or plastic works of a scientific or technical character. Class I is the appropriate category for the registration of claims to copyright in published and unpublished pictorial, graphic, or sculptural material that is designed for a scientific or technical use, such as a mechanical drawing or an anatomical model. (See Part 2.10.)

b. Commercial prints or labels. If a work of art has been published in connection with the sale or advertisement of an article or articles of merchandise, registration in Class K on Form KK is appropriate. For example, registration on Form KK would be appropriate for a painting reproduced and first published on the cover of a candy box, or a carved lion's head intended for promotional display in connection with the sale or advertisement of imported beer. However, if the principal copyrightable element is sculptural, Class G may be the appropriate category for registration. (See topic 2.13.2.II.e.1.)

2.8.3 Registration requirements

I. Copyrightable subject-matter. To be entitled to copyright protection, a work of art must contain an appreciable amount of original pictorial, graphic, or sculptural material. If a work of art consists entirely of uncopyrightable elements, registration is not authorized. On the other hand, the mere presence of uncopyrightable elements in a work will not prevent registration on the basis of features susceptible of protection under the statute. Thus, an abstract design may be registrable even though it incorporates uncopyrightable standard geometric forms, such as circles and squares. The copyrightability of a work of art does not depend upon artistic merit or aesthetic evaluation. For example, a child's drawing may exhibit a very low level of draftsmanship as judged by adult standards and yet be entitled to registration as a work of art. Similarly, it is not necessary that a work of art adhere to established aesthetic criteria. Hence, the form of a copyrightable work of art may be representational or abstract, naturalistic or stylized. It may express a traditional theme in a conventional manner, or it may rely for its effect upon fantastic or incongruous imagery and unnatural juxtapositions or combinations. Regardless of form, however, nothing is entitled to statutory protection as a work of art unless it can be considered the "writing of an author" within the meaning of the United States Constitution and the Statute.

a. Pictorial or graphic material. Class G is appropriate for the registration of

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

a. Pictorial or graphic material (cont'd)

original pictorial or graphic material which embodies creative authorship in its pattern, form, shape, or configuration. Creative authorship may be expressed in the linear contours of a drawing, the brush marks or strokes characteristic of a painting, the assemblage of diverse fragments comprising a collage, the arrangement and juxtaposition of pieces of colored stone in a mosaic portrait, or the pattern of an abstract design executed in marquetry. Visual representation is always basic, regardless of the form in which a work is presented.

1. Minimal standards. A certain minimal amount of original creative authorship is essential for registration in Class G or in any other class. Copyrightability depends upon the presence of creative expression in a work, and not upon aesthetic merit, commercial appeal, or symbolic value. Thus, registration cannot be based upon the simplicity of standard ornamentation such as chevron stripes, the attractiveness of a conventional fleur-de-lys design, or the religious significance of a Greek cross. Similarly, it is not possible to copyright common geometric figures or shapes such as the hexagon or the ellipse, a standard symbol such as an arrow or

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

a. Pictorial or graphic material (cont'd)

1. Minimal standards (cont'd)

a five-pointed star. Likewise, mere coloration cannot support a copyright even though it may enhance the aesthetic appeal or commercial value of a work. For example, it is not possible to copyright a new version of a textile design merely because the colors of red and blue appearing in the design have been replaced by green and yellow, respectively. The same is true of a simple combination of two or three standard symbols such as a circle, a star, and a triangle, with minor linear or spatial variations.

Examples:

(a) An unpublished design for textile fabric is submitted for registration in Class G. The design consists of a standard unembellished character of Chinese calligraphy painted upon horizontally striated grass cloth. Practice: Registration is not authorized in this case. Like typography, calligraphy is not copyrightable as such, notwithstanding the effect achieved by calligraphic brush strokes across a striated surface.

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

a. Pictorial or graphic material (cont'd)

1. Minimal standards (cont'd)

Examples (cont'd)

(b) An applicant for registration has developed a novelty item consisting of transparently clear plastic sheets bonded together around their periphery, and having a small amount of colored liquid petroleum in the air space between the laminated sheets. Any slight pressure upon the external surface results in the formation of undulating patterns and shapes, no two of which are ever identical. Practice: Since the specific outlines and contours of the patterns and shapes formed by the liquid petroleum do not owe their origin to a human agent, it is not possible to claim copyright in such patterns and shapes. The novelty of the idea embodied in the work and the effects achieved by the action of the petroleum under pressure likewise do not warrant registration.

b. Sculptural material. Class G is appropriate for the registration of original sculpture which embodies creative authorship expressed in three-dimensional form

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. Sculptural material (cont'd)

by means of carving, casting, cutting, molding, shaping, or otherwise processing plastic or hard materials. Creative sculptural authorship may be expressed in the form, or the peripheral outline of whatever has been given a three-dimensional form or shape.

1. Minimal standards. The requisite minimal amount of original sculptural authorship necessary for registration in Class G does not depend upon the aesthetic merit, commercial appeal, or symbolic value of a work. Copyrightability is based upon the creative expression of the author, that is, the manner or way in which he forms or fashions his material. Thus, registration cannot be based upon standard designs which lack originality, such as common architectural moldings, or the volute used to decorate the capitals of Ionic and Corinthian columns. Similarly, it is not possible to copyright common geometric figures or shapes in three-dimensional form, such as the cone, cube, or sphere. The mere fact that a work of sculpture embodies uncopyrightable elements, such as standard forms of ornamentation or embellishment, will not prevent registration. However, the creative expression capable of supporting copyright must

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. Sculptural material (cont'd)

1. Minimal standards (cont'd)

consist of something more than the mere bringing together of two or three standard forms or shapes with minor linear or spatial variations. In no event can registration rest solely upon the fact that an idea, method, plan, or system has been successfully communicated in three-dimensional form. In every case, it is the creative expression of the author which must be able to stand alone as an independent work apart from the general idea which informs it.

Examples:

(a) Registration in Class G is requested for a design or model of a table lamp. Cast in plaster of Paris, the design features the head of a horse mounted on an iron horseshoe with toe and heel calks which supports the entire fixture. Electrical wiring is concealed within the plaster casting. Practice: If the head of the horse is original, registration may be considered on that basis. However, the general idea of embellishing a lighting fixture with a work of art is

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. Sculptural material (cont'd)

1. Minimal standards (cont'd)

Examples (cont'd)

(a) (cont'd)

not copyrightable. The same is true of the decorative idea of using a horseshoe as support for a lamp base, regardless of the pleasing effect thereby achieved.

(b) A toy manufacturer conceives a novel idea for a toy consisting of multi-colored geometrical spheres, cubes, and cylinders of varying sizes. All of these parts or pieces are magnetized, and will adhere to each other when placed in close proximity. Thus, it is possible to construct an indefinite variety of shapes and figures by means of the magnetized parts or pieces. The manufacturer desires to protect the three-dimensional aspects of the toy before publication occurs. He applies to the Copyright Office for registration of a design for an unpublished sculptural work of art. His application Form G is accompanied by one complete set of magnetized spheres, cubes, and

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. Sculptural material (cont'd)

1. Minimal standards (cont'd)

Examples (cont'd)

(b) (Cont'd)

cylinders arranged in a plain box according to size and color. Practice: We will refuse a registration in Class G based solely upon the unassembled toy, even though its component parts or pieces are potentially capable of being arranged in copyrightable shapes and forms. The general idea of the toy is, of course, uncopyrightable, regardless of its novelty or uniqueness.

(c) A work described as a "mobile" consists of nine pieces of translucent colored glass each of which is suspended by wire from an overhead rack designed to rotate about a pivot in a horizontal plane. The suspension wires vary in length and no two pieces of glass share the same shape or outline. Registration is sought in Class G on the basis of the overall effect produced by the play of light upon the suspended glass components of a work which the applicant

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. Sculptural material (cont'd)

1. Minimal standards (cont'd)

Examples (cont'd)

(c) (cont'd)

describes as "three-dimensional." No copyrightable authorship is claimed in the design of the individual pieces of glass. Practice: Registration based upon the cumulative effect produced by the component members of the mobile will be refused. If these members had contained copyrightable authorship, registration could have been considered on the basis of the two-dimensional design features displayed by the pieces of glass.

c. New matter. If a work of art which has been previously published or previously registered in unpublished form contains new pictorial, graphic, or sculptural material, registration based upon such material may be made in Class G, provided the "new matter" is original and copyrightable in itself.

Examples:

(1) A pencil drawing of an old man's head has been registered as an unpublished

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

c. New matter (cont'd)

Examples (cont'd)

(1) (Cont'd)

drawing. Another version of the same work is subsequently submitted for registration. The later version incorporates the earlier drawing with the addition of new pictorial matter showing the arms and torso. Practice: The later version is entitled to registration on the basis of additional pictorial matter.

(2) A statuette depicting a costumed female dancer was originally published in clear white porcelain. Later, a color version was produced with much hand-painted detail such as the facial features and decorative embroidery designs appearing on the figure's clothing. Practice: The painting embodied in the color version would support an additional registration. However, a mere change in coloration apart from any original artwork would not support registration, such as, a change in the color combination of the dancer's skirt from blue and gold to red and yellow.

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

d. Utilitarian articles. The copyrightability of a work of art is not affected by the fact that the work may also embody utilitarian features, or that it may itself be embodied in an article of utility. In all cases, registration must be based upon those copyrightable features such as artistic sculpture, carving, or pictorial representation which can be identified separately and are capable of existing independently as a work of art, as for example: (1) a statuette used as a base for a table lamp, (2) an original painting reproduced on a porcelain dinner plate, (3) a sculptured figure used as a handle for a letter opener, (4) an artistic design reproduced on textile fabric, or (5) a stained glass window.

1. Attractiveness of design. The mere fact that an article of utility is novel, unique, and attractively designed does not warrant its registration as a "work of art." Thus, where design is dictated by utilitarian requirements rather than aesthetic considerations, it cannot provide a sufficient basis for registration. Examples of useful articles whose design is generally dictated by function rather than aesthetic considerations include the following: (1) automotive bodies and parts, (2) marine hulls, (3) stoves, toasters, vacuum cleaners and other

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

d. Utilitarian articles (cont'd)

1. Attractiveness of design (cont'd)

household appliances, (4) bottles and food containers, (5) kitchen utensils, (6) articles of clothing, (7) machinery, and (8) tools and implements.

2. Availability of protection under design patent law. A useful article may be accepted for registration as a work of art, even though it may also be entitled to protection under the design patent law. (*See* Title 35, United States Code.) However, a copyright claim in the drawings or other pictorial material submitted in connection with a patent application is not entitled to registration after the patent has been issued. (*See* sections 202.10(b) and 202.10(c) of the Regulations of the Copyright Office.)

II. Formalities of registration

a. Deposit of copy or copies

1. Published textiles and lace. The requirement that both copies comprising a deposit must be identical may present special problems in cases where the copyrighted work consists of a repetitive design

2.8.3 Registration requirements (cont'd)

II. Formalities of registration (cont'd)

a. Deposit of copy or copies

1. Published textiles and lace (cont'd)

reproduced on a continuous roll or sheet, as for example, a bolt of cloth or a "web" of lace. Generally, the copies submitted for deposit should represent the form in which publication first occurred. In the case of goods sold by the yard or fractions thereof, the copies need not exceed one yard in length. However, if the notice of copyright appears at regular intervals along the selvage, margin, or edge of the material, it is always desirable that each copy be of sufficient length to show two such notices in order to establish the frequency and regularity of their position on the work.

END OF PART 2.8
PAGES 2-300 THROUGH 2-420
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Chapter 2

Copyrightable Matter

Part 2.11

PHOTOGRAPHS
(CLASS J)

Outline of Topics

2.11.1 IN GENERAL

- I. Statutory provisions
  - a. United States Code
  - b. The Regulations of the Copyright Office
- II. Copyrightable matter subject to registration in Class J
  - a. Constituent elements
  - b. Forms of embodiment

2.11.2 CLASSIFICATION OF PHOTOGRAPHS

- I. Origin of the material
  - a. Domestic works
  - b. Foreign works
- II. Nature of the material
  - a. Single photographs
  - b. Multiple photographs
  - c. Photographs and text combined
  - d. Contributions to "books" and "periodicals"

2.11.3 REGISTRATION REQUIREMENTS

I. Copyrightable subject-matter

- a. Photographic composition
- b. The subject of the photograph
- c. Old photographs
- d. Mechanical reproduction
- e. New matter

II. Publication with notice

- a. Publication
- b. Notice of copyright
- c. Exception to the general rule
- d. Unpublished photographic material

III. Formalities of registration

- a. Application form prescribed
- b. Deposit of copy or copies
- c. Fee prescribed
- d. Time limitation

IV. Manufacturing requirement

Chapter 2

COPYRIGHTABLE MATTER

Part 2.11

PHOTOGRAPHS
(CLASS J)

2.11.1 In general

I. Statutory provisions

a. United States Code. The copyright law provides for the registration of claims to copyright in "Photographs." (Title 17, U.S.C. sec. 5(j)(1964)).

b. The Regulations of the Copyright Office. "This class [J] includes published or unpublished photographic prints and filmstrips, slide films and individual slides. Photoengravings and other photomechanical reproductions of photographs are registered in Class K on Form K." (37 C.F.R. sec. 202.13(1967)).

II. Copyrightable matter subject to registration in Class J

a. Constituent elements

1. Photographic material. Class J is appropriate for the registration of published and unpublished still photographs involving original authorship in their composition. For a more detailed discussion of the nature of the authorship capable of supporting registration in Class J, see topic 2.11.3.I.

2.11.1 In general (cont'd)

II. Copyrightable matter subject to registration in Class J (cont'd)

a. Constituent elements (cont'd)

1. Photographic material (cont'd)

(a) Printed reproductions. A published reproduction of a photograph produced by lithography, photoengraving, rotogravure, collotypy, mezzotinto, or other similar process of reproduction, is ordinarily not classified as a "photograph," but may be considered for registration in Class K, either on Form K as a "print or pictorial illustration" (See topic 2.12.1.II.a.1), or on Form KK as a "commercial print or label" (See topic 2.13,1.II.a.1). Under certain circumstances, registration in Class B on Form BB as a "contribution to a periodical" may be appropriate. (See Section 2.3.4.)

(b) Motion pictures. Motion pictures are not registrable in Class J. Classes L and M are appropriate for photographic motion-picture films which are mounted on reels and intended for projection or exhibition. (See Part 2.14.)

2.11.1 In general (cont'd)

II. Copyrightable matter subject to registration in Class J (cont'd)

a. Constituent elements (cont'd)

2. Text and compilations. Class J is generally not appropriate for works which are primarily textual, although the presence of captions and incidental text in a work which is primarily photographic will not prevent registration in Class J. Compilations of photographs may be considered for registration in Class J, but Class A may be preferable in cases where the copyright claim in a published collection of photographs is limited to the compilation. (See topic 2.11.2.II.b.1.)

b. Forms of embodiment. Copyrightable photographic material cabable of supporting registration in Class J may be embodied in photographic prints and filmstrips, slide films, and individual slides.

2.11.2 Classification of photographs

I. Origin of the material

a. Domestic works

1. Definition. For purposes of registration, a photograph is considered of domestic origin, if:

2.11.2 Classification of photographs (cont'd)

I. Origin of the material (cont'd)

a. Domestic works (cont'd)

1. Definition (cont'd)

(a) The author was a citizen of, or domiciled in, the United States at the time of first publication, or,

(b) The work was first published in the United States, or

(c) The work is in unpublished form.

2. Registration designator. Claims to copyright in domestic photographs are assigned registration numbers preceded either by the letters Ju (unpublished works) or the letters Jp (published works).

b. Foreign works

1. Definition. For purposes of registration, a published photograph is considered of foreign origin, if:

(a) The author was neither a citizen of, nor domiciled in, the United States at the time of first publication, and

(b) The work was first published outside the United States.

2.11.2 Classification of photographs (cont'd)

I. Origin of the material (cont'd)

b. Foreign works (cont'd)

1. Definition (cont'd)

(b) (cont'd)

NOTE: A photograph which is entitled to registration in unpublished form is always considered of domestic origin for purposes of registration, even if the work was produced by an author who is neither a citizen of, nor domiciled in, the United States. (See topic 2.11.2.I.a.1(c).)

2. Registration designator. Claims to copyright in foreign photographs are assigned registration numbers preceded either by the letters Jf or Jfo. The terminal letters "f" and "fo" signify registration under Option A and Option B, respectively. (See topics 2.11.3.III.b.3 and 2.11.3.III.c.2)

II. Nature of the material

a. Single photographs. Class J is the appropriate category for the registration of all individual photographic prints and film slides, in either published or unpublished form.

b. Multiple photographs. Class J is the appropriate category for the registration of collections of two or more

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

b. Multiple photographs (cont'd)

photographs including filmstrips, slide films, and the like, in either published or unpublished form.

1. Published works. A collection of photographs in book form may also be considered for registration in Class A on Form A, provided the work has been published with a notice of copyright in the form and position prescribed by the law for a "book or other printed publication." (See Part 2.2 topic 4.2.1.I and Section 4.3.1.) In such case, if neither Form A nor Form J is received, but an opinion is requested, the Office will suggest registration in Class A, even though registration in Class J would not necessarily be considered doubtful.

2. Unpublished works. A collection of unpublished photographs which are the subject of a single claim of copyright may be considered for registration together as a unit in Class J on Form J, provided the photographs constitute a single work of common authorship which can be identified as a whole by a single title.

c. Photographs and text combined. The presence of captions and incidental text in a photographic work will not

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

c. Photographs and text combined (cont'd)

prevent registration in Class J. However, if the copyrightable contents of a work which is photographic in form are entirely textual, registration in Class J is not authorized, regardless of the fact that the text is reproduced by a photomechanical process or that the work appears on microfilm, photographic transparencies, or the like.

1. Published works. If the textual material is substantial, registration in Class A would be appropriate, provided the requirements of the law relating to the notice of copyright on a "book" have been satisfied. (*See* Part 2.2, topic 4.2.1.I and Section 4.3.1.)

2. Unpublished works. If the textual material is substantial and it appears that copyright is being claimed in both text and photography, the claim should not be registered until the scope of registration in Class J has been pointed out to the applicant. Generally, unpublished textual material (except captions and incidental text) should be separated from the copy deposited, wherever possible, and returned to the applicant. Unpublished textual material is ordinarily not entitled to copyright

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

c. Photographs and text combined (cont'd)

2. Unpublished works (cont'd)

registration. Works prepared for oral delivery and dramas are exceptions, however. (*See* Parts 2.4 and 2.5.)

d. Contributions to "books" or "periodicals." Class J is ordinarily not appropriate for photographic material first published in the form of a contribution to a "book," newspaper, magazine, or other "periodical," because such contributions are generally photographic reproductions printed by means of lithography, photoengraving, rotogravure, collotypy, mezzotinto, or other similar process. (*See* topic 2.11.1.II.a.1(a).) However, in the unusual case where the contribution consists of a photograph itself rather than a printed reproduction, registration may be considered in Class J, provided the contribution contains its own separate copyright notice.

1. Class A. If the contribution to a "book" includes a substantial amount of text, or consists of many photographs, a single registration in Class A is appropriate, subject to the requirements explained in Part 2.2. (*See also* topic 2.11.2.II.b.1.)

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals (cont'd)

1. Class A (cont'd)

Example:

A pictorial filmstrip of eighty frames, thirty of which embody original text, has been published with its own separate notice as a part of an audio-visual kit. Practice: Request application on Form A, pointing out the possible limitations of registration in Class J. If the applicant nevertheless insists on Class J, register the claim on Form J.

2. Class B. A "contribution to a periodical" may be an article, story, pictorial illustration, or other work first published in a periodical; a "periodical" is a magazine, newspaper, or similar work published at regular intervals of less than a year under the same general title. If such a contribution includes a substantial amount of text, or consists of many photographs, a single registration in Class B on Form BB is appropriate, subject to the requirements explained in Section 2.3.4.

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals (cont'd)

2. Class B (cont'd)

Example:

> A set of six photographic film slides illustrating undersea life has been published with a separate notice on each slide as part of the May 1970 issue of a monthly scientific journal on marine biology. Practice: Register the claim either on Form BB or Form J. However, if the contribution had included a substantial amount of text, we should request application on Form BB, pointing out the possible limitations of registration in Class J. If the applicant nevertheless insists on Class J, register the claim on Form J.

2.11.3 Registration requirements

I. Copyrightable subject-matter. To be entitled to copyright protection as a "photograph," a work must contain an appreciable amount of original photographic authorship. Registration in Class J is not authorized if creative authorship of a copyrightable nature is lacking, as, for example, in a case where the photograph results solely

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

from the operation of mechanical or photo-mechancial processes. (See topic 2.11.3.I.d.) NOTE: The copyrightability of a photograph depends upon the variety and extent of elements involved in its composition and not upon the nature of the thing depicted or the subject photographed.

a. Photographic composition. Original photographic composition capable of supporting registration in Class J may involve a variety of elements, such as, time and light exposure, camera angle, arrangement or disposition of persons, scenery, or other subjects depicted in the photograph. The copyrightability of photographic composition does not depend upon artistic merit or aesthetic evaluation.

1. Minimal standards. Although the copyrightability of photographic material is not determined by qualitative or aesthetic standards, a certain minimal amount of original creative authorship is essential for registration in Class J or in any other class. The mechanical, photomechanical, or other processes involved in the production of a photograph, are not themselves capable of supporting registration in Class J.

b. The subject of the photograph. Registration of claims to copyright in published or unpublished photographs does

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

not depend upon the nature of the subject photographed, nor does such registration extend to the subject depicted, regardless of their nature.

1. Kinds of subjects. In general, anything capable of being reduced to visual perception by photographic means could become the subject of a copyrightable photograph. Examples of commonly photographed subjects include, but are not necessarily limited to, the following categories:

(a) An uncopyrightable subject, such as a typewriter, diesel engine, or sailing vessel. (See also topic 2.11.3.I.b.4.)

(b) A copyrightable subject, such as an oil painting or a statue. (See also topics 2.11.3.I.b.2 and 2.11.3.I.b.4.)

(c) A living subject, such as a human person, an animal, or flowers.

(d) A natural subject, such as a seascape, a sunset, or a cluster of shade trees.

(e) An artificial subject, such as the steel framework of an office building, or a violin.

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

2. Textual matter. A photographic reproduction of textual matter is generally not registrable as a "photograph." However, the mere fact that the principal subject of a "photograph" is textual will not prevent registration in Class J, provided there is sufficient original photographic authorship. For example, a copyrightable photograph could depict a book of poems opened in the candlelight showing the text of Samuel Taylor Coleridge's poem "Kubla Khan."

3. Duplication of subjects. The same subject may be depicted in two or more copyrightable photographs. For example, the dome of the Capitol building in Washington could be the subject of many copyrightable photographs.

4. The subject as basis of claim. A claim to copyright in Class J based upon the premise that the copyright will protect the subject depicted in a photograph will ordinarily be rejected. However, there are certain exceptions:

(a) Published works. If the photograph itself is copyrightable as such, and has been published with the required statutory

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

4. The subject as basis of claim (cont'd)

(a) Published works (cont'd)

notice, registration may be made on that basis, but the Office will call the applicant's attention to the scope of registration in Class J.

Example:

> A copyrightable photograph, published with notice, depicts a bronze statue which the author of the photograph wishes to protect by registration in Class J.
> Practice: Write to the applicant, advising him of the scope of registration of the "photograph," and pointing out the registration requirements for a sculptural "work of art" in Class G. (See Part 2.8.) However, if the applicant desires registration in Class J, knowing that the claim is limited to the photograph, registration may accordingly then be made on Form J.

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

4. The subject as basis of claim (cont'd)

(b). Unpublished works. If the photograph itself is copyrightable as such, registration may be made on that basis. However, if there is reason to believe that the applicant desires copyright protection for the subject depicted in the photograph, registration should not be made until the scope of protection afforded by registration in Class J has been pointed out to the applicant.

Example:

An unpublished photograph depicts an electronic recording device which has been the subject of an unsuccessful application for design patent. Practice: Write to the applicant, pointing out that registration in Class J will not protect the recording device as such. Registration may be made thereafter, if the applicant so desires.

(c). Old photographs. The mere fact that a photograph is old or depicts a subject no longer in existence will not prevent registration. However, if the author of an old photograph is deceased or unknown, the Office may request an explanation of the basis of the copyright before registering the claim.

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

4. The subject as basis of claim (cont'd)

(c). Old photographs (cont'd)

1. Authorship. Copyright depends upon authorship. Unless a person is the author of a photograph, or holds rights which derive from the author, he is not entitled to claim copyright in it. A sharp distinction must be drawn between title to, or possession of, the physical copy of a photograph, and the copyright in the work.

(d). Mechanical reproduction. Although the production of a photograph necessarily involves a mechanical process, a photograph produced solely by the operation of a mechanical process lacks the requisite element of creative composition and, consequently, is not subject to registration in Class J. The photographic reproduction of pictorial, graphic, or textual material for the purpose of providing regular copies of such material, rather than for the sake of producing "photographs" as such, indicates that registration in Class J is not authorized, as for example, in the case of a photostatic reproduction of a real property deed.

(e). New matter. New photographic material appearing in revised versions of photographs may support registration in Class J, provided the new matter is original and copyrightable in itself.

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

4. The subject of the claim (cont'd)

(e). New matter (cont'd)

Example:

A filmstrip consisting of twenty-four frames, seven of which appeared in an earlier published version.

II. Publication with notice. Publication is not a prerequisite for registration in Class J. Thus, a photograph may be considered for registration in either published or unpublished form.

a. Publication. A photograph is generally not considered published in the copyright sense until copies have actually been placed on sale, sold, or publicly distributed. However, the unrestricted public exhibition of a photograph may also constitute a publication in the copyright sense. (See Section 3.1.1 and topic 3.1.3.II; see also Part 4.1.)

b. Notice of copyright. The published copies of a "photograph" must contain a copyright notice in the form and position prescribed by law.

1. Form. The law requires that the copyright notice include the word "Copyright," the abbreviation "Copr.," or the symbol ©, accompanied by either: (1) the name of the copyright owner, or (2) the initials, monogram, mark, or symbol of the copyright owner,

2.11.3 Registration requirements (cont'd)

II. Publication with notice (cont'd)

b. Notice of copyright (cont'd)

1. Form (cont'd)

provided his name appears on some accessible part of the work. (See also topic 4.2.1.II.)

2. Position. A notice on any accessible part of a single-page work is acceptable for purposes of registration in Class J. A notice located on the margin or permanent mounting of a work (such as a base, pedestal, selvage, or frame) is also acceptable, provided the notice is visible and not concealed. (See also Section 4.3.6.)

3. Year date. The year date of publication may be included in the notice on a "photograph" but, ordinarily, it is not required. However, for the U.C.C. requirements in this regard, see topic 2.11.3.II.b.4 and Section 4.2.4.

4. U.C.C. notice. The notice prescribed in the Universal Copyright Convention consists of the symbol ©, accompanied by the name of the copyright owner and the year date when copyright was first secured, either by publication, or, in the case of an unpublished work, by registration in the Copyright Office. (See also topic 4.2.4.III.) The notice must be

2.11.3 Registration requirements (cont'd)

II. Publication with notice (cont'd)

b. Notice of copyright (cont'd)

4. U.C.C. notice (cont'd)

located on the work in such manner and position as to give reasonable notice of the copyright claim.

(a) Defective U.C.C. notice acceptable under U.S. law. If the registrability of a work depends upon the availability of the U.C.C. exemptions granted under the copyright law [17 U.S.C. sec. 9(c)], the copies as first published should bear the abovementioned U.C.C. notice. However, in such a case, where the notice satisfies the requirements of Section 19 of the statute, but not the U.C.C. requirements of Section 9(c), registration will be made under the rule of doubt, and a cautionary letter will be sent. (See also Part 8.2.)

c. Exception to the general rule. A "photograph" by a foreign author which was first published outside the United States before June 18, 1959 may be considered for registration, even if the copyright notice was omitted or defective. However, a cautionary letter will be sent in every such case. (See topic 4.1.3.II.b; see also topics 8.2.1.I.a and 8.2.1.III.a.)

2.11.3 Registration requirements (cont'd)

II. Publication with notice (cont'd)

d. Unpublished photographic material. As long as a "photograph" remains in unpublished form, no copyright notice is required in order to secure statutory protection. NOTE: If a "photograph" is first registered in unpublished form and later published with notice of copyright, a second registration should be made. (See Chapter 10; see also topic 5.3.4.III.)

III. Formalities of registration. Generally, registration of a claim to copyright in a "photograph" cannot be made until the Copyright Office has received a completed application form, together with the required copy or copies, and the prescribed registration fee. Under certain circumstances, a catalog card may be substituted in lieu of the registration fee for published works of foreign origin. (See topic 2.11.3.III.c.2.)

a. Application form prescribed. Application for registration of a claim to copyright in a "photograph" should be submitted on Form J, which is appropriate for published or unpublished works of both domestic and foreign origin. (Regarding the distinction between works of domestic and foreign origin, see topic 2.11.2.I.)

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

b. Deposit of copy or copies

1. Unpublished works. Registration of an unpublished "photograph" of either domestic or foreign origin requires the deposit of one complete copy of the work. (*See* topic 5.2.1.II.c.)

2. Published domestic works. Registration of a published "photograph" not of foreign origin requires the deposit of two complete copies of the "best edition" of the work as first published. (*See* topic 5.2.2.I.a.)

3. Published foreign works. Registration of a published "photograph" of foreign origin may be made on the basis of the deposit of either one or two copies. (*See* topic 5.2.2.I.b.)

(a) Option A. One complete copy of the "best edition" of the photographic work as first published (together with the required registration fee) will suffice for purposes of deposit under Option A. In all other respects, the deposit requirements are the same as those specified for published domestic works in topic 2.11.3.III.b.2.

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

b. Deposit of copy or copies (cont'd)

3. Published foreign works (cont'd)

(b) Option B. Two complete copies of the "best edition" of the photographic work as first published (together with the required catalog card) will suffice for purposes of deposit under Option B, provided the copies (together with the required application and catalog card) are received in the Copyright Office within six months of the date of first publication outside the United States. Option B is not available if either the author, co-author, or copyright proprietor of the work is a U.S. citizen, domiciliary, or resident on the date the application is filed. In all other respects the deposit requirements are the same as those specified for published domestic works in topic 2.11.3.III.b.2.

4. Best edition. In the case of a published "photograph," the copy or copies submitted for deposit should represent the form in which the work was first made available to the public without restriction. Where two or more editions or issues of different quality are published

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

b. Deposit of copy or copies (cont'd)

4. Best edition (cont'd)

simultaneously, deposit of a copy or copies of the "best edition" will be required. Thus, if a "photograph" is published in both black and white and color versions, the color version would ordinarily be considered the "best edition." If two copies are required for deposit, both copies should be duplicates. For further explanation of the requirements relating to "best edition," see Part 5.3.

c. Fee prescribed

1. Generally. The fee for each registration is six dollars ($6.00).

2. Waiver-of-fee option. Published "photographs" of foreign origin may be entitled to registration without payment of the customary fee, provided all of the following elements are received in the Copyright Office within six months after the date of first publication outside the United States: (1) a completed application Form J, (2) two copies of the work as first published, and (3) a completed catalog card. (See also topic 2.11.3.III.b.3(b).) NOTE: Payment of the registration fee is always required if:

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

c. Fee prescribed (cont'd)

2. Waiver-of-fee option (cont'd)

(a) The "photograph" is in unpublished form, or

(b) The author was a U.S. citizen or domiciliary on the date of first publication, or if the author of the work, a co-author, or the proprietor of the copyright in the work is a U.S. citizen, domiciliary, or resident on the date the application is filed.

d. Time limitation

1. Unpublished works. There is no obligation to register a claim to copyright in an unpublished work. As long as a "photograph" remains in unpublished form, it is subject to protection under the common law against unauthorized use before publication without any action being required in the Copyright Office. However, if a work registered in unpublished form is later published with notice of copyright, a second registration should be made "promptly" thereafter. (*See* topic 2.11.3.III.d.2.)

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

d. Time limitation (cont'd)

2. Published works. Application for registration should be made "promptly" after publication with notice, but in no event after the expiration of the original twenty-eight year term of statutory protection. The special six-month limitation prescribed for the registration of foreign works under Option B is explained in topics 2.11.3.III.b.3(b) and 2.11.3.III.c.2.

IV. Manufacturing requirement. A "photograph" may be considered for registration in Class J regardless of the place where the work was produced or manufactured. (See topic 6.4.1.II.a.)

END OF PART 2.11
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RESERVED FOR FUTURE USE

Chapter 2

COPYRIGHTABLE MATTER

Part 2.14 MOTION PICTURES (CLASSES L-M)

Outline of Topics

2.14.1 WHAT IS A MOTION PICTURE?

I. In general
II. Classification
    a. Two classes
    b. Single application form
    c. Video tapes
    d. Types of material not eligible

III. Sound tracks

2.14.2 STATUTORY REQUIREMENTS FOR COPYRIGHT IN MOTION PICTURES

I. Publication
II. Notice
    a. Form
    b. Position

III. Manufacture

2.14.3 PROCEDURE FOR REGISTRATIONS

I. Copies
    a. Published motion pictures
    b. Unpublished motion pictures

II. Fees
III. Information contained in application
    a. Authorship
    b. New matter

IV. Unit registrations

CHAPTER 2. COPYRIGHTABLE MATTER

Part 2.14 MOTION PICTURES (CLASSES L-M)

2.14.1 What is a Motion Picture?

I. In general. "A motion picture is a series of pictures presenting to the eye the illusion of motion, which pictures are projected on a screen or transmitted by means of television or otherwise, and have as their origin a series of connected pictures on film or other recording media."

II. Classification.

a. The copyright law provides for registration of motion pictures in two classes: (17 U.S.C. §5)

1. Photoplays (Class L). Photoplays are motion pictures that are dramatic in character and tell a connected story.

   Examples:

   (1) DAVID COPPERFIELD, a feature film based on the Dickens novel

   (2) THE WHITE ROSE OF MEMPHIS, a filmed, original teleplay

   (3) THE STRAWBERRY ISLAND ADVENTURE, an animated cartoon

   (4) LARRY LAGER AND PHIL PILSNER GO CAMPING, a filmed T.V. cartoon commercial

2. Motion Pictures Other than Photoplays (Class M). This class includes motion pictures which do not tell a connected story by dramatic means.

   Examples:

   (1) THE NEWS OF THE WORLD IN REVIEW, a newsreel

   (2) INTO THE SETTING SUN, a travelog

2.14.1 What is a Motion Picture? (cont'd)

II. Classification. (cont'd)

a. (cont'd)

2. (cont'd)

Examples: (cont'd)

(3) GASOLINE ENGINES FOR WOMEN, a filmed educational T.V. program

(4) YOUR SIDEWALK REPORTER, a filmed T.V. program

b. For purposes of registration, all motion pictures are entered on a single application, Form L-M. The application must indicate whether the film is a photoplay or other than a photoplay.

c. If otherwise qualified as a motion picture, a work reproduced on video tape may be considered for registration in Class L or Class M.

d. The following types of material are not eligible for registration in Class L or Class M:

1. Motion picture scripts. Registration for such works may be considered in Classes C or D.

2. Motion picture scenarios, synopses, outlines, etc. Such works are regarded as "books," and may not be registered in unpublished form.

3. Filmstrips. Such works may be considered for registration as "photographs" in Class J.

III. Sound tracks.

a. The Copyright Office takes no position as to whether copyright in a motion picture covers the integrated sound track portions of the work.

2.14.1 What is a Motion Picture? (cont'd)

III. Sound tracks. (cont'd)

b. Registration is not made for a sound track alone, or for a sound track as the only new matter in a previously published or registered motion picture.

Examples:

(1) An old silent film with a new sound track.

(2) A previously published foreign film with a dubbed sound track in English.

2.14.2 Statutory Requirements for Copyright in Motion Pictures.

I. Publication.

a. Claims are registered in both published and unpublished motion pictures.

b. Publication of a motion picture is generally deemed to have taken place when prints of the film are placed on sale, sold, distributed to the public, or distributed to film exchanges, film distributors, exhibitors, or broadcasters under a lease or similar arrangement.

Examples of publication:

(1) Prints of a "public service" film are sent out free of charge to various television stations for exhibition.

(2) Prints of a theatrical film are sent out to distributors for rental to exhibitors.

c. Mere public exhibition or performance is not generally regarded as publication of a motion picture.

2.14.2 Statutory Requirements for Copyright in Motion Pictures. (cont'd)

I. Publication. (cont'd)

c. (cont'd)

Examples:

(1) "Preview" of a film to test audience reaction.

(2) Performance of a film on television.

II. Notice.

a. Form.

1. The notice on a published motion picture should generally consist of "the word 'Copyright,' the abbreviation 'Copr.,' or the symbol ©, accompanied by the name of the copyright proprietor, and. . .the year in which the copyright was secured by publication."

2. A notice lacking the year date will be considered for registration either in Class L or Class M, but we caution the applicant that such a notice may not be adequate, expecially in Class L.

b. Position.

1. The law does not specify where a notice should be placed on a motion picture film, but the Office will recommend that the notice appear on or near the title frame.

2. Registration will be made if the notice appears either in the opening frames containing the title and credits or at the end of the film.

3. Registration will be refused if the notice appears only on one of the reels in the middle of the film.

2.14.2 Statutory Requirements for Copyright in Motion Pictures. (cont'd)

II. Notice. (cont'd)

b. Position. (cont'd)

4. The notice should be legible when the film is screened or exhibited.

(a) A notice scratched on the leader of a film will be questioned. Registration will be made upon advice that a legible notice appeared on all copies of the film.

(b) A notice on the reel or container will not be accepted.

III. Manufacture. The manufacturing requirements of Sec. 16 (17 U.S.C.) do not apply to motion pictures.

2.14.3 Procedure for Registration.

I. Copies.

a. Published motion pictures.

1. The law requires deposit of two complete copies of the best edition of the film as published; or, if the "author" of the film is a citizen or subject of a foreign state or nation, one complete copy of the best edition is required. (17 U.S.C. §§ 13, 215)

2. The copies must be complete, identical, and of the best edition published.

Example:

A copy of an 8-reel film in which reel 6 is missing will not be accepted.

2.14.3 Procedure for Registration. (cont'd)

I. Copies.(cont'd)

a. Published motion pictures. (cont'd)

3. In addition to the actual prints of the film, the Copyright Office requires the deposit of a description of a published motion picture. This may take the form of a shooting script, a synopsis, a press book, a continuity, or other identifying matter.

4. A contract for the return of deposited copies may be made between the copyright claimant and the Librarian of Congress, under terms and conditions prescribed by the Librarian.

(a) In the absence of such a contract, copies are either held pending the execution of an agreement or are transferred to the Library's Exchange and Gift Division.

(b) When such a contract exists, the copies may be returned to the applicant immediately following examination.

(c) Such contracts are not encouraged in the case of foreign claimants, but requests for such contracts should be forwarded to the Library's Exchange and Gift Division.

b. Unpublished motion pictures.

1. Photoplays. Section 12 (17 U.S.C.) requires the deposit "...of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay."

2. Motion pictures other than photoplays. Section 12 (17 U.S.C.) requires the deposit "...of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay."

2.14.3 Procedure for Registration. (cont'd)

II. Fees.

a. Published motion pictures.

1. The registration fee for all domestic motion pictures is $6.00.

2. If the motion picture qualifies as a work of foreign origin, it may be registered without fee if two copies, a catalog card, and application are received within six months of first publication.

b. Unpublished motion pictures. The registration fee for all unpublished motion pictures is $6.00.

III. Information contained in application.

a. Authorship.

1. The law requires a statement of the author's citizenship and the application form calls for his name.

2. The law does not make the identity of the "author" of a motion picture clear.

(1) Ordinarily a motion picture embodies a large number of contributions, including those of the author of the story, author of the screenplay, director, editor, cameraman, individual producer, etc. These persons ordinarily are not regarded as the "author" of the film in the copyright sense.

(2) Since most films are largely "made for hire" the employer is usually regarded as the "author." In most cases the employer is the producing company, although there may be cases where a releasing company, a bank or other organization or an individual is regarded as the author.

2.14.3 Procedure for Registration. (cont'd)

III. Information contained in application. (cont'd)

a. Authorship. (cont'd)

2. (cont'd)

(3) The statement of authorship given on the application will ordinarily not be questioned unless there is a clear conflict with the facts appearing in the descriptive matter.

b. New matter. To be registrable as a "new version," a motion picture should contain new visual elements or substantial revisions.

Examples of copyrightable new matter:

(1) English subtitles on a previously published foreign film.

(2) An explanatory prologue added to an Italian film version of an opera.

(3) An edited version of War and Peace, running 100 minutes rather than 200.

IV. Unit registrations. Related works, such as consecutive installments of a series, must be registered separately under individual titles unless they were actually first published as a unit.

End of Part 2.14

Chapter 3

Publication

Outline of Topics

Part 3.1 WHAT IS PUBLICATION

3.1.1 General publication

- I. General policy with respect to publication
- II. Definition of general publication
- III. Examples of general publication
- IV. Publication of part of a work

3.1.2 Limited publication

- I. Definition of limited publication
- II. Examples of limited publication
- III. General policy with respect to limited publication

3.1.3 Public disclosure by means other than distribution of copies

- I. Performance or rendition
- II. Exhibition of an artistic or graphic work
- III. Exhibition of motion pictures
- IV. Distribution of phonorecords

Part 3.2 DATE OF PUBLICATION

3.2.1 In general

- I. Definition
- II. General policy with respect to the date of publication

Part 3.2 DATE OF PUBLICATION (cont'd)

3.2.2 Choice of a date

- I. Factors to consider
- II. Consignment or release
- III. Publication of separate parts or installments
- IV. Previous registration and new versions
- V. Works first published abroad

3.2.3 Unacceptable dates of publication

- I. Date missing
- II. Incomplete date
- III. Qualified or indefinite date
- IV. Separate parts or installments
- V. Previous edition or version
- VI. Application in advance of date of publication

Part 3.3 EVIDENCE OF PUBLICATION

3.3.1 Factors raising questions as to publication

- I. General practice
- II. Appearance of copies
- III. Information furnished by applicant

3.3.2 After rejection for publication without statutory notice

- I. Resubmission
- II. Unauthorized publication

3.1.3 Public disclosure by means other than distribution of copies. (cont'd)

II. Exhibition of an Artistic or Graphic Work. (cont'd)

b. (cont'd)

Examples:

(1) Artistic glassware is exhibited at an industrial fair limited to the trade only.

(2) Photographs of textile designs are exhibited with a legend expressly prohibiting reproduction.

c. Where an artistic or graphic work is shown on television, the Copyright Office will explain that it is not clear whether this constitutes publication, but will make registration as a published work if the applicant believes that publication has occurred.

d. Publication will be questioned where the words "exhibited," "shown," "televised," etc., have been added in the publication line of an application covering an artistic or graphic work.

III. Exhibition of Motion Pictures.

a. Lease or rental of copies of a motion picture to a film exchange, film distributor, exhibitor, or broadcaster ordinarily constitutes publication (see item 3.1.1 III. d, above), but mere public exhibition would not be regarded as publication.

Examples:

(1) A "sneak preview" of a theatrical film at a single theatre would not constitute publication.

(2) A television film shown simultaneously on a network of 300 stations would not be regarded as published.

3.1.3 Public disclosure by means other than distribution of copies. (cont'd)

III. Exhibition of Motion Pictures. (cont'd)

b. Publication will be questioned where the words "exhibited," "shown," "televised," etc., have been added in the publication line of an application covering a motion picture.

IV. Distribution of Phonorecords.

a. A phonorecord, such as a disc, tape, or other similar reproduction of a sound recording, is not regarded as a "copy" of the musical composition, dramatic composition, or literary work recorded on it, and is not acceptable as a deposit copy for copyright registration of the musical composition or the literary or dramatic work. Therefore, the act of distributing phonorecords does not constitute such publication as will invest a statutory copyright, except for registration as a sound recording in Class N.

b. For the purposes of securing statutory copyright and registration for a sound recording, phonorecords are regarded as "copies" thereof, and discs, tapes, cassettes, cartridges, and other similar reproductions of sound recordings will be accepted as deposit copies in Class N.

c. Distribution of phonorecords may constitute either investitive or divestitive publication of a sound recording, and the rules stated in sections 3.1.1 and 3.1.2 above are applicable.

4.2.2. "Copyright" or "Copr." or © variants.

I. A misspelled or variant form of "Copyright" or "Copr." may be accepted if it is clear that copyright is meant. Examples of variants which may be accepted:

1. Copyrighted
2. Copywrite
3. Copywritten
4. Copyright Pending
5. Copyright Applied For
6. Copyright and Registered
7. Registered U.S. Copyright Office
8. Copy.
9. Copyr.
10. Cpr.
11. Corp. (if clearly not used to refer to a corporation.)

II. The equivalent of "Copyright" in a foreign language (e.g., the Spanish "derechos reservados") will not be accepted.

III. A variant of the symbol © will be acceptable only where it resembles the © closely enough to indicate clearly that the copyright symbol is meant.

Acceptable variants:

1. $\overset{\frown}{c}$
2. ©
3. $\underset{\smile}{c}$
4. @
5. (c)

Unacceptable variants:

1. CO
2. C
3. C/O
4. $\boxed{c}$
5. @

4.2.3 Name of claimant

I. Identity of claimant

a. In general

1. For all classes of works, the notice must include "the name of the copyright proprietor." (17 U.S.C. sec. 19.)

2. Ordinarily the Copyright Office will not question the name given in the notice, as long as it is substantially the same as the name given as claimant in the application and appears sufficient to identify the copyright proprietor.

   (a) Abbreviations, last names alone, trade names, etc., will ordinarily be accepted if substantially the same form of name also appears as claimant in the application. (See Supplementary Practice No. 37).

   Examples:

   (1) Colo. Mfg. and Merch. Co.

   (2) Doloukanova

   (3) Maxwell's

   (b) Where it is clear from the face of the copies that the person named in the notice is not the copyright proprietor, registration will be denied.

   Examples:

   (1) "Copyright 1960 by Hill and Dale Songs, licensee of U.S. publishing rights"

   (2) "Copyright 1960 by George Jean Kronenberger (for the unknown author or owner of copyright in this play)"

   (c) Where the name in the notice is so vague, abbreviated, or ambiguous that it could not be considered to identify the claimant, registration will be denied. (But see topic 4.2.3.II, below, concerning variant forms of claimant's name.)

5.3.1 Best Edition. (cont'd)

IV. Where copies are not of published edition.

a. When the character of the copies received or other information suggests that they are not copies of a published edition, the Office may question whether the work has been published in a better edition, or has been published at all.

Examples:

(1) Proof copies or unbound copies of a printed book.

(2) Printed pages with handwritten inserts.

(3) A map consisting of parts pasted together.

(4) Photographs of a print (with Class K application).

(5) Photostats of a commercial label.

b. But if the applicant states that the work was published in the questioned form, the copies in that form will generally be accepted, unless we are informed of a better edition.

c. Publication of the work ordinarily will not be questioned simply because the copies are typewritten or handmade, unless there are other circumstances indicating that the work has not been published.

d. Copies of a book consisting of page proof, if the applicant states that the work was published in that form, are acceptable even though the material is intended for later republication in periodicals as a number of separate items or as a serial.

5.3.2 Complete copies.

I. The copies deposited must be "complete copies" (17 U.S.C. §§ 12, 13, 22)

II. In general, copies of an entire work as published must be deposited. (See topic 5.2.2., I)

Examples of copies not acceptable because not complete:

(1) A book with missing pages

(2) Illustrations cut out of a book

(3) One song taken out of a songbook

(4) A contribution clipped from a periodical or from an encyclopedia

(5) One volume of a single two-volume work

(6) Reprints of individual maps published in an atlas

(7) One earring

III. Where a copyrightable work is a part of a larger work which includes separate parts which are not copyrightable, deposit of the uncopyrightable portions is not required.

Example:

(1) A game consisting of a copyrightable board and directions, and uncopyrightable game rack and pieces

IV. An unpublished manuscript (Class C, D, or E) which is sufficiently developed to be used for delivery or performance, is acceptable as a complete copy even though there is some indication that additional material may later be added.

7.1.3 Authors and Proprietors (cont'd)

II. Which author. The "author" whose citizenship (or domicile) is determinative in a particular case is the person who created the material covered by the copyright claim.

a. In the case of a "new version," the citizenship (or domicile) of the author of the copyrightable new matter, rather than that of the author of an earlier version upon which the present work is based, is the deciding factor.

Examples:

(1) A composition by a Russian composer, edited and arranged by an American citizen, may be registered on the basis of the new matter.

(2) A translation of "Gone With The Wind" by a Russian citizen may not be registered (unless first published in a foreign U.C.C. country).

b. In the case of a work made for hire, the citizenship (or domicile) of the employer for hire is the deciding factor.

Examples:

(1) Registration may be made for a work written by a Russian citizen as employee for hire of an American publisher.

(2) Registration may be made for a periodical, the publisher of which is an American citizen, regardless of the citizenship of the various contributors, editors, etc.

7.1.3 Authors and Proprietors (cont'd)

III. Posthumous work. In the case of a posthumous work, it is not clear whose citizenship should determine the eligibility for copyright. It is the policy of the Copyright Office in such cases to request the applicant to state not only the citizenship of the deceased author at the time of his death but also the citizenship and (where appropriate) the domicile of the copyright claimant. Registration may be made where either the deceased author or the copyright claimant meets the citizenship and domicile requirements. (See Supplementary Practice No. 39.)

7.1.4 Time as of which Status of Author is Determined. It is the citizenship (or domicile) of the author at the time of first publication of the work that determines its copyrightability; or, if the work is being registered in unpublished form, the citizenship or domicile of the author on the date the application is submitted is the deciding factor. Changes in the author's status occuring after publication are immaterial for this purpose.

Examples:

(1) When a work was published in 1950 the author was a Venezuelan citizen; the fact that he has now become a U.S. citizen does not make the work registrable.

(2) A Turkish author was resident in the U.S. while writing a book, but had returned permanently to Turkey by the time it was published; registration cannot be made (unless first publication took place in a foreign U.C.C. country).

Chapter 12. ASSIGNMENTS AND RELATED DOCUMENTS

Part 12.1 IN GENERAL

12.1.1 Statutory provisions.

I. A "copyright . . . may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will." (17 U.S.C. §28).

II. "Every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded." (17 U.S.C. §30).

12.1.2 Copyright Office policy.

I. Substantive contents. As a rule, the Copyright Office will not attempt to judge or interpret the substantive contents of an assignment or other document; recordation will be made as long as the formal requirements have been met.

a. If the document bears a descriptive heading (e.g., "license," "merger," "abandonment," etc.) this information may be included in the index cards, but this is regarded as transcription rather than interpretation.

b. In exceptional cases, where it is clear that the instrument is invalid or does not accomplish what was intended, the Copyright Office will reject the document.

Examples:

(1) A document purporting to be an assignment which is actually a self-serving declaration signed by the "assignee."

12.1.2 Copyright Office policy. (cont'd)

I. Substantive contents. (cont'd)

h. (cont'd)

Examples: (cont'd)

(2) A document purporting to be an abandonment of copyright which is signed by someone other than the copyright owner.

II. Any related instrument. Generally, the Copyright Office does not require recordation of a document but will, upon request, record any formally acceptable assignment or related instrument.

a. Where appropriate, the Copyright Office may point out the assignment provisions of the law and suggest the desirability of recording an instrument.

b. In certain cases, recordation of an assignment may be required as a condition of registration in the name of an assignee. (See Chapter 4 (Notice), Part 4.2.3, I. g.).

Examples:

(1) Registration for an unpublished work has been made in the name of the assignor; the work has been published unchanged with a notice in the name of the assignor, but with a reference to the assignment (e.g., "Copyright 1954 John Doe; assigned to Richard Roe").

(2) Registration of an ad interim claim has been made in the name of the assignor; the U.S. edition has been published unchanged with a notice in the name of the assignor, but with a reference to the assignment (e.g., "Copyright 1954 John Doe, assigned to Richard Roe").

12.2.2 Relation to copyright. (cont'd)

I. Indirect or potential. (cont'd)

Examples:

(1) A bill of sale of a business.

(2) A birth or death certificate.

(3) A blanket power of attorney.

II. No registration for work referred to. A document may be recorded even if the work to which it refers has not been registered for copyright, but registration in such cases may be suggested or requested.

III. Relationship not clear. Where the relationship between the document to be recorded and copyright is unclear or obscure, recordation may be delayed and the applicant may be asked his purpose in submitting the instrument.

Examples:

(1) A document consisting of a collection of newspaper clippings referring to a night club performer.

(2) A bill of lading referring to a shipment of motion picture films.

IV. No purpose served. Where it seems clear that recordation of a document would serve no purpose, recording will be discouraged and, in appropriate cases, refused.

12.2.2 Relation to copyright. (cont'd)

V. Effort to record what cannot be registered. Where it is clear that the applicant is seeking to substitute recording a document for registering a copyright claim, or to assert by recordation a claim for which registration would be refused, the document will be rejected.

VI. Submitted in error. Where it seems probable that the document has been submitted to the Copyright Office in error, it may be questioned or, in clear cases, returned without recordation.

Examples:

(1) An assignment of rights in a trade-mark or patent.

(2) A document citing a registration number which has no relation to any Copyright Office registration number.

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No. 1

COMMERCIAL PRINTS AND LABELS

I. Commercial prints and labels must contain copyrightable literary or artistic matter to be registrable. [May 1952]

II. Prints and labels which may also be trade-marks. The Office will make no investigation to determine whether the copyrightable matter in a print or label may also be or become a trade-mark. A print or label containing copyrightable literary or artistic matter may be registered, under the rule of doubt, even though the copyrightable matter may also be or become a trade-mark.

One of the requirements for trade-mark registration is that the trade-mark must have been used before its registration. Hence, where the deposit copies of a print or label bear a notice of trade-mark registration which indicates that the registered trade-mark includes all the copyrightable matter, the Office will question whether the deposit copies are copies of the work as first published. In such cases, in order to determine whether the copies first published bore a copyright notice, we will ask the applicant to submit copies of the work as first published.

The deposit copies need not be questioned where the notice of trade-mark registration indicates that the registered trade-mark includes only a part of the copyrightable matter. [March 1953]

No. 8

WORKS OF ART

(pp. S-11 through S-15)

Withdrawn as Supplemental Practice and incorporated in Chapter 2, July 1973.

No. 9

GOVERNMENT PUBLICATIONS

I. Basic Rule. Publications of the United States Government are not copyrightable (17 U.S.C. § 8).

II. Authorship as Criterion.

a. Government authorship.

1. A work authored by a U.S. Government agency (i.e., by its officers or employees as a part of their official duties), regardless of whether it is published or unpublished, is a U.S. Government publication and is not copyrightable.

Examples:

(1) Acts of Congress.
(2) Executive orders or proclamations.
(3) Agency rules and regulations, bulletins, reports, forms, circulars.
(4) Federal court decisions.

Exceptions:

(1) Under Section 8, Title 17, U.S.C. the Postmaster General is authorized to secure copyright on behalf of the United States in black and white illustrations of U.S. postage stamps, together with such descriptive, historical, and philatelic information with regard to the stamps as the Postmaster General deems suitable.

(2) Under Section 6 of the Standard Reference Data Act, 82 Stat. 340, the Secretary of Commerce may secure copyright on behalf of the United States as author or proprietor of any standard reference data that he prepares or makes available under the Act.

2. A copyright claim by a private person in a reprint of a Government publication is not registrable (unless it contains copyrightable new matter.)

b. A claim of copyright by the U.S. Government in a published work is an indication that the work is a Government publication, but is not conclusive. If there is an indication of non-Government authorship, we will inquire as to the facts of authorship and the acquisition of the copyright by the Government.

c. Where a work of private authorship was first published with notice of copyright in the name of a private person and was later acquired by the Government, registration may be considered in the name of the original claimant and we will suggest recordation of the assignment to the Government.

V. Governments Other Than the United States.

a. State governments.

Publications of State governments or of their local subdivisions (counties, cities, school boards, housing authorities, etc.) do not fall within the prohibition of § 8. It should be noted, however, that public ordinances, court decisions and similar official legal documents of State and local governments are not considered copyrightable for reasons of public policy.

b. District of Columbia.

Publications of the government of the District of Columbia will be treated as publications of the U.S. Government.

c. Territories of the United States.

1. Incorporated territories.

The governments of incorporated territories of the U.S. (e.g., Puerto Rico) may be comparable with State governments, though this is a matter of doubt. Their publications may be accepted for registration with a cautionary letter.

2. Unincorporated territories.

Publications of the governments of unincorporated territories of the U.S. (Guam, Panama Canal Zone, Virgin Islands, Samoa) will be treated as publications of the U.S. Government.

V. Governments Other Than the United States (cont'd)

d. Foreign governments.

Publications of the governments of foreign countries with which we have copyright relations are acceptable for registration.

Exception: Registration will not be made for statutes, court opinions, and similar official documents which are inherently uncopyrightable in the United States.

e. International governmental organizations.

Publications of international governmental organizations (e.g., the United Nations and its specialized agencies such as UNESCO, ECOSOC, FAO, WHO, or ILO or the Organization of American States) are acceptable for registration.

VI. Periodicals.

A disclaimer is not requested for a periodical despite the presence of some Government material in it. However, where an entire periodical appears to be an official publication of a Government agency, it will be questioned.

No. 17

UNITED STATES COPYRIGHT RELATIONS AND ACCEPTABLE STATEMENTS OF CITIZENSHIP

(pp. S-52 through S-72)

Withdrawn as Supplemental Practice
July 1973.

No. 18

NOTICE CONTAINING THE YEAR DATE IN WHICH COPYRIGHT WAS SECURED PLUS AN EARLIER DATE OR DATES NOT APPLICABLE TO THE WORK

This memorandum concerns our procedure in cases where there are two or more year dates in the copyright notice and we have ascertained that the earlier date or dates do not refer to anything. In this situation, copyright in the entire work has been secured in the last year named in the notice, and there is no previous registration or publication to which the earlier dates might refer. The question raised by such a notice, of course, is whether the earlier dates have any effect on the term of copyright.

Since this question has apparently not been decided by the courts, no "antedated notice" warning letter or circular should be sent. On the other hand, the question is not wholly free from doubt. Therefore, the application and certificate should be annotated in all such cases to show the dates in the notice.

No. 30

REFUNDING OF EXCESS FEES

According to the Regulations of the Copyright Office excess fees in the amount of $1.00 or less will not be returned unless specifically requested by the remitter. If a refund is requested, the amount will be refunded by postage stamps.

Excess fees in the amount of $1.01 or more will be refunded by check.

No. 31

REQUEST FOR CORRECTION IN, ADDITION TO, OR CANCELLATION OF A COMPLETED RECORD

PART I

Basic procedures for handling requests for corrections in, additions to, or cancellation of, our completed records

I. Initial procedures

A. Letter, application or copy. Generally, a letter or application describing a possible mistake in a completed record, or a copy sent to be attached to or substituted for the original deposit copy, should be referred to the appropriate section in the Examining Division which will be responsible for determining whether the error actually exists in our records.

1. If an error is found, the case will be handled in accordance with the instructions in Section II below.

2. If no error is found, or if the error is so minor that any additional action would be futile or confusing, the applicant should be advised that no further action is necessary.

B. Formal document. Formal documents that describe errors and are specifically submitted for recordation should be referred initially to the Renewal and Assignment Section, regardless of the class in which the registration was made.

> whether a work containing such limiting statement is one subject to the Office of Education regulation and we should not undertake to inquire in every such case.

We have informed the Office of Education that:

(a) If, in cases where it requires the limiting statement to accompany the notice, it wishes to have that statement reflected in our registration records, it should instruct the copyright claimant to state the limitation in the application for registration.

(b) If no such statement appears in the application, the limitation accompanying the notice will not be reflected in our registration records.

If in the future we learn of any other governmental regulation requiring a limitation, we will give the same information to the agency concerned.

The above policy does not concern disclaimers, i.e., statements of exclusion or limitation which indicate that some portions of the work are not covered by the claim of copyright. The present practices of the Office in this regard are not being changed.

[November 1968]

No. 37

THE USE OF A SURNAME ONLY IN THE COPYRIGHT NOTICE

Generally the presence of only the surname of the copyright owner in the notice of copyright is sufficient for registration purposes, unless the names of one or more other individuals with the same surname appear in a position on the copy that might mislead the public as to the identity of the copyright proprietor.

In those instances where the general practice is followed and registration is made, a cautionary letter should be sent to the applicant explaining that while registration is being made, one purpose of the copyright notice is to identify the copyright proprietor, and that the use of the surname only in the notice may be of doubtful validity.

The following hypothetical cases illustrate this general rule, and set out the practices to be followed in each case.

1. Where the copyright notice contains only the proprietor's surname and the copies do not bear the full name of any individual with that surname placed in such a position that it might mislead the public as to the identity of the copyright proprietor, we should register the claim with a warning letter and an annotation showing that only the surname appears in the notice.

In notice:	Smith
On copy :	No full name with the surname Smith
In appl. :	Claimed by John Smith
Practice :	Register with a warning letter and an annotation showing that only the surname appears in the notice. Where it is necessary that we request an application, our letter should instruct the applicant to state the relationship

between the surname and the claimant's name given at line 1. For example, line 1 could read: "Smith, surname of John Smith." An annotation should not be placed on an application showing the relationship at line 1.

2. Where the copyright notice contains only the proprietor's surname and the copies do not bear the full name of any individual with that surname placed in such a position that it might mislead the public as to the identity of the copyright proprietor, and line 1 of the application lists two or more individuals with the same surname as proprietors, we should register the claim with a warning letter and an annotation showing that only the surname appears in the notice.

   In notice: Smith

   On copy : No full name with the surname Smith

   In appl. : Claimed by John Smith and Jean Smith

   Practice : Same as example 1.

3. Where the copyright notice contains only the proprietor's surname and his full name appears on the copies we should register the claim provided the copies do not bear the full name of any other individual with that surname placed in such a position that it might mislead the public as to the identity of the copyright proprietor.

   In notice: Smith

   On copy : John P. Smith

   In appl. : Claimed by John P. Smith

   Practice : Same as example 1, except where registration is being made in Classes F-K. Because of the statutory notice provisions for works in Classes F-K, registration should be made without either a warning letter or an annotation.

4. Where the copyright notice contains only the proprietor's surname and his full name appears on the copies, but the full name of another individual with the same surname who is not included as a copyright proprietor on line 1 of the application also appears on the copies in such a position that it might mislead the public as to the identity of the copyright proprietor, we should correspond to ascertain whether the name of the other individual is entitled to be listed on line 1 of the application as a copyright proprietor. If the correspondence reveals that the other individual is also entitled to claim copyright in the work, a new application should be requested with the appropriate explanatory statement given on line 1. In the event the other individual whose name appears on the copy is not entitled to claim copyright in the work, with the exception of works falling in Classes F-K, registration must be refused on the ground that use of the surname alone in the notice under these circumstances fails to adequately identify the copyright proprietor. Registration with a warning letter may be made under these circumstances for works falling in Classes F-K.

In notice: Smith

On copy : Jean Smith and John Smith

In appl. : Claimed by John Smith

Practice : Correspond to ascertain whether Jean Smith is also entitled to claim copyright in the work, in which case a new application should be filed with the statement "Smith, surname of John Smith and Jean Smith" appearing on line 1. If correspondence reveals that "Jean Smith" is not entitled to claim copyright in the work, registration must be refused in classes other than F-K on the ground that use of the surname alone in the notice under these circumstances fails to adequately identify the copyright proprietor. If the work falls in Classes F-K and correspondence has revealed that "Jean Smith" is not entitled to claim copyright in the work, registration should be made with a warning letter.

No. 38

STANDARD REFERENCE DATA ACT
CLAIMS BY THE U.S. GOVERNMENT:
REGISTRATION WITHOUT A FEE

The Standard Reference Data Act, Public Law 90-396 (15 U.S.C. 290), provides that the Secretary of Commerce may secure copyright and renewal thereof on behalf of the United States as author or proprietor in standard reference data prepared or made available under the Act.

This Office has concluded that the registration fee will be waived for works submitted in accordance with the Standard Reference Data Act.

In registering works under the Standard Reference Data Act without a registration fee two annotations should be made on both the application and the certificate.

The first annotation involves placing an asterisk at both lines 1 and 3, generally. The asterisk should be placed at both lines 1 and 3 of the application and certificate to indicate that registration of the claim is authorized on the basis of the Standard Reference Data Act, even though the Government is the proprietor and author, and the asterisk should be keyed to the comment in the annotation box. If the Government is the proprietor, but not the author, the asterisk should be placed at line 1 only.

Example:

The statement on the application would read:
* Claim registered under the Standard Reference Data Act, P.L. 90-396 (15 U.S.C. 290). (Cert.)

The statement on the certificate would read:
* Claim registered under the Standard Reference Data Act, P.L. 90-396 (15 U.S.C. 290).

[1973]

The second annotation involves placing two asterisks in the fee box on both the application and certificate, and the two asterisks should be keyed to the comment in the annotation box. The fee box must be annotated in order to indicate that in this particular case the fee is being waived.

Example:

The statement on the application would read:
** Fee Waived (Cert.)

The statement on the certificate would read:
** Fee waived

No. 39

CITIZENSHIP OF CLAIMANT IN POSTHUMOUS WORKS

Topic 7.1.3.III of the Compendium states the basic policy with respect to posthumous works, which is to request the citizenship of the deceased author and the citizenship of the copyright claimant. It is our position that the law is unclear whether the citizenship of the deceased author or of the claimant controls in posthumous work cases. The Compendium contains no exceptions for cases where the name of the deceased author appears in the notice and registration is made with either "Estate of X" or "Y, executor of the estate of X" given in the claimant line on the application. In this situation, as well as where the estate or the executor is named as the copyright owner in the notice, we should ask for the citizenship of the copyright claimant, if the work is posthumous. This practice applies in all cases except where the work is eligible under the Universal Copyright Convention by virtue of the place of publication.

Please note that we are not taking the position that an "estate" as such necessarily has a citizenship. There are doubts about the propriety of using "Estate of X" in the notice (or at the claimant line of the application) since the estate per se is not usually regarded as a legal entity capable of holding property. Consequently, we should not literally ask for the "citizenship of the Estate of X;" we should ask for the citizenship of the claimant. The true legal holder of the literary property interest (who is presumably represented by the phrase "Estate of X") does have a citizenship, and this is the information needed at line 1. Title to personalty such as copyright usually vests in the personal representative of the deceased author in the case of a will. In case of intestacy the court would usually appoint an administrator (depending upon the size of the estate).

[1973]

Since eligibility to claim copyright is one of the fundamental requirements of our law, the citizenship of the claimant, as well as that of the deceased author, is required in the posthumous work situation to assure a complete legal record, except where the work is eligible under the U.C.C. because of first publication in a U.C.C. country other than the United States.

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  - Unpublished works only 2-144

WRITINGS OF AN AUTHOR, see topic headings under Chapter 2